

No. 12503

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United States  
Court of Appeals  
For the Ninth Circuit.

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LAURENCE STARNES,

Appellant,

vs.

VERN HUMPHRIES and MARVIN CAMP-  
BELL,

Appellees.

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Transcript of Record  
In Two Volumes  
Volume I  
(Pages 1 to 432)

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Appeal from the District Court  
for the Territory of Alaska  
Third Division

FILED  
AUG 4 - 1950

PAUL P. O'BRIEN,



No. 12503

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Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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RALPH H. COTTIS,

Box 941, Anchorage, Alaska.

For Appellees:

STANLEY M. McCUTCHEON,

BUELL A. NESBETT,

Anchorage, Alaska.

In the District Court for the Territory of Alaska,  
Third Division

No. A-4979

VERN HUMPHRIES and MARVIN CAMP-  
BELL,

Plaintiffs,

vs.

LAURENCE STARNES, JOE BLACKARD, and  
GLEN PHILLIPS,

Defendants.

### AMENDED COMPLAINT

Comes now the plaintiffs and for cause of action against the defendants complain and allege as follows:

#### I.

That said plaintiffs are copartners engaged in the restaurant business under the firm name and style of Alaska Food Service, said business being located at Anchorage, Alaska, in premises described as the Panhandle Bar and Cafe at 314 Fourth Avenue in said city.

#### II.

That said defendants purportedly hold a leasehold right in said premises by virtue of a lease from Anna K. Campbell, owner, to defendants.



## III.

That on or about the 4th day of February, 1948, at Anchorage, Alaska, defendant, Joseph Blackard, entered into a lease agreement with plaintiff, Vern Humphries, whereby defendant agreed to lease to plaintiff Vern Humphries, for the period of one year, space in said premises adequate for the operation of a restaurant business and whereby defendant, Joseph Blackard, further agreed to furnish space, light, heat and water necessary for such operation and to provide the utensils and equipment for said operation, a copy of said lease being attached hereto and made a part of this amended complaint, marked "Exhibit A."

## IV.

That it was further agreed by the terms of said lease described in paragraph III hereof, that plaintiff would pay to defendant as rental for said premises, Six Per Cent (6%) of the gross receipts derived from all operations of said restaurant business or the sum of Two Hundred Dollars (\$200.00) per month, whichever might be the greater.

## V.

That pursuant to an offer by defendant, Joseph Blackard, and acceptance by plaintiff, Vern Humphries, said agreement of lease was entered into, duly signed by both parties and possession of said restaurant premises delivered to plaintiff, Vern Humphries, from defendant in accordance with the terms of said agreement.

## VI.

That relying on said agreement, plaintiff expended large sums of money in the construction of a counter upon said premises and expended further sums of money for modern fixtures and equipment necessary for said restaurant business, including ranges, stools and other necessary fixtures and equipment.

## VII.

That said counter and equipment is located in the Southwest portion of said Panhandle premises. That said restaurant business was so located at the direction of defendants herein.

## VIII.

That plaintiffs are now entitled to the possession of said restaurant premises in accordance with the agreement existing between plaintiff and defendant.

## IX.

That plaintiff has performed all the things and conditions required by said agreement to be performed by the lessee.

## X.

That plaintiff commenced the operation of said restaurant business on or about the 6th day of March, 1948.

## XI.

That since the commencement of said business, defendants have maliciously, wilfully and wantonly interfered with plaintiff's business, resulting in great loss of profits to plaintiff.

## XII.

That on or about the 20th day of April, 1948, defendants took possession of plaintiffs' storeroom, a part of said leased premises, and have failed and refused to permit plaintiffs the use thereof, all to plaintiffs' damage.

## XIII.

That defendants have refused and neglected to provide plaintiffs' light, heat and water for said restaurant business as required by said agreement, all to plaintiffs' damage in the sum of Five Hundred Seventy Five Dollars (\$575.00).

## XIV.

That defendants have maliciously, wilfully and unlawfully operated and conducted gambling games interfering with and otherwise being detrimental to plaintiffs' business all to plaintiffs' damage.

## XV.

That defendants have wilfully and maliciously injured plaintiffs' credit rating, much to plaintiffs' damage.

## XVI.

That on or about the 5th day of May, 1948, defendants did, with deliberate intent to injure plaintiff, maliciously, wilfully and wantonly prohibit the delivery of fuel oil to plaintiff, all to plaintiffs' damage.

## XVII.

That on or about the 5th day of May, 1948, at the hour of 1:30 o'clock in the morning of said day, de-

fendants took possession of plaintiffs' restaurant premises, shut off the cook range, locked the premises and announced to plaintiffs' customers that the premises were permanently closed and that plaintiffs were no longer to have possession thereof, thereby seriously injuring plaintiffs' business.

### XVIII.

That because of the acts of defendants, plaintiffs have been damaged in the sum of Ten Thousand Five Hundred Seventy Five Dollars (\$10,575.00).

### XIX.

That plaintiffs have regained possession of the said premises and are now in possession thereof, but that defendants threaten to continue interfering with plaintiffs' business and that plaintiffs have no speedy or adequate remedy at law.

### XX.

That defendants have threatened plaintiff with physical violence should plaintiff attempt to continue operating their restaurant business.

Wherefore, plaintiffs pray judgment against defendants as follows:

1. For the sum of Ten Thousand Five Hundred Seventy Five Dollars (\$10,575.00) in actual damages.

2. For the sum of Ten Thousand Dollars (\$10,000.00) in exemplary damages.

3. That defendants and each of them be restrained and enjoined from in any manner interfering with plaintiffs' business.

4. For such other and further relief as the Court may deem equitable in the premises.

McCUTCHEON & NESBETT,  
Attorneys for Plaintiffs.

By /s/ S. J. McCUTCHEON.

United States of America,  
Territory of Alaska—ss.

Vern Humphries and Marvin Campbell, being first duly sworn, each for himself and not one for the other, doth depose and say: That he is one of the plaintiffs in the above-entitled action; that he has read the foregoing complaint, knows the contents thereof, and that the same is true as he verily believes.

/s/ VERNON HUMPHRIES,

/s/ MARVIN CAMPBELL.

Subscribed and Sworn to before me this 7th day of May, 1948.

[Seal] /s/ SHELLE W. BROOKE,  
Notary Public in and for  
Alaska.

My Commission expires: 2-3-52.

## EXHIBIT "A"

## Agreement

This agreement, made and executed in duplicate at Anchorage, Alaska, this 4th day of February, 1948, by and between Joe Blackard of Anchorage, Alaska, hereinafter referred to as "Blackard," and Vernon Humphries and Kenneth Havins known as the Alaska Food Service, hereinafter referred to as "Humphries."

Witnesseth:

That in consideration of the mutual promises hereinafter set forth, the parties hereto have agreed, and by these presents do agree as follows:

Humphries agrees to conduct a clean sanitary restaurant in the premises known as the Panhandle Bar and Cafe, 314 Fourth Ave., Anchorage, Alaska.

Blackard agrees to furnish the space, light, heat and water necessary for such operation and to provide the utensils and equipment now on the premises. Humphries represents that he has examined the foregoing and is satisfied therewith.

Humphries shall operate the foregoing restaurant as an independent contractor and will indemnify Blackard from any liability for debts and obligations incurred by Humphries. To implement this agreement, Humphries shall provide bond in the sum of \$3000.00 for the purpose of protecting Blackard from any claims made against Blackard, and arising out of acts or omissions to act on the part of Humphries.



Humphries shall pay to Blackard on or before the 10th day of each month a sum equal to 6% of the gross receipts derived from all operations conducted by Humphries upon the premises or the sum of \$200.00, whichever is the greater.

Humphries shall keep accurate books of account, showing all receipts from said operations of whatsoever nature including airlines business; Humphries agrees to clear all sales through cash register tapes. All books and tapes shall be open to inspection by Blackard, at reasonable times.

Humphries agrees to comply with all laws and in event a grading system is adopted for restaurants by the City of Anchorage, Humphries agrees to endeavor to obtain the highest possible grading thereunder.

The parties understand that the present restaurant equipment is to be moved to a new location approximately 18' South of its present site. Humphries agrees to bear all expense of moving said equipment and all expenses incurred in furnishing and maintaining additional equipment and utensils as demand may from time to time require. At the termination of this agreement Humphries agrees to surrender the premises peacefully and forthwith and an equipment inventory of equal or better quality than present inventory and allowed to move or sell additional equipment when agreement terminated.

In event Humphries defaults in the terms of this agreement Blackard may terminate this one year

agreement upon 24 hours notice. Humphries may terminate this agreement upon 30 days notice. Upon termination Blackard agrees to reimburse Humphries for the cost of consumable supplies.

Neither party may assign his interest hereunder without the written consent of other party.

Humphries shall furnish all labor and supplies necessary to provide service adequate for the demand encountered.

Witness the hands and seals of the parties date first written.

/s/ JOE BLACKARD,

/s/ VERNON HUMPHRIES,

/s/ KENNETH HAVINS.

Witness:

/s/ S. McCUTCHEON.

[Endorsed]: Filed May 7, 1948.

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[Title of District Court and Cause.]

### ANSWER

Comes now the defendants by their attorneys, Hellenthal, Hellenthal and Cottis, and for their Answer to the Complaint of the Plaintiffs, admit, allege and deny, as follows:

#### I.

Admit the allegations of Paragraphs I and II of said Amended Complaint.



II.

Deny each and every other allegation of the Complaint.

Wherefore, the defendants pray that the said cause be dismissed and that they have judgment against the defendants for their costs, disbursements and attorneys' fees herein.

/s/ RALPH H. COTTIS,

HELLENTHAL and COTTIS,  
Attorneys for defendants.

United States of America,  
Territory of Alaska—ss.

Joe Blackard, being first duly sworn, upon oath, deposes and says:

I am one of the defendants in the foregoing action; I have read the foregoing Answer, know the contents thereof and the matters and things therein set forth are true as I verily believe.

/s/ JOE BLACKARD.

Subscribed and sworn to before me this 24th day of May, 1948.

[Seal] /s/ MARY KILROY,  
Notary Public for Alaska.

My Commission expires: 11/10/51.

[Endorsed]: Filed June 15, 1949.

[Title of District Court and Cause.]

### VERDICT

We, the jury duly sworn and empaneled to try the above-entitled cause, do find for the plaintiffs and against the defendants, Laurence Starns, and Joe Blackard, and find that the plaintiffs are entitled to recover of and from said defendants the sum of Five Thousand Nine Hundred and Thirty Five Dollars (\$5,935.00) as compensatory damages, and further find that the plaintiffs are entitled to recover of and from said defendants, Laurence Starns, and Joe Blackard, the additional sum of Two Thousand Five Hundred Dollars (\$2,500.00) as punitive damages.

Dated at Anchorage, Alaska, this 6th day of July, 1949.

/s/ MAURICE A. STAFFORD,  
Foreman.

[Endorsed]: Filed July 6, 1949.

[Title of District Court and Cause.]

**MOTION TO REJECT VERDICT OF JURY  
AND FOR ALTERNATIVE RELIEF**

Come now the defendants Joe Blackard and Laurence Starns in the above-entitled matter by their attorneys Hellenthal, Hellenthal & Cottis and move this court as follows:

1. That the verdict of the jury herein rendered on the 6th day of July, 1949, be rejected in its entirety for the reason that it is not supported by a preponderance of the evidence and was an advisory verdict only.

2. That the said verdict be rejected as to the defendant Laurence Starns for the reason that as to the said defendant such verdict is contrary to the weight of the evidence.

3. That the said verdict be rejected insofar as it includes punitive damages for the reason that it is contrary to the weight of the evidence in such respect.

4. That the said verdict be rejected insofar as it exceeds the sum of Two Hundred Forty Dollars (\$240.00) for the reason that no sufficient proof was offered of damages in excess of said sum.

5. That the said verdict be rejected for the reason that the undisputed evidence showed a termination of the plaintiff's right of occupancy of the premises on 16 April, 1948, and the complaint alleges no wrong-doing prior to that date.

6. That the said verdict be rejected upon the ground that this court in determining the validity of a temporary restraining order in this cause of necessity determined the issue of right to occupancy of the premises, and the said verdict is contrary to such determination.

As an Alternative to the Foregoing Relief, the Said Defendants Move That the Verdict Be Set Aside and a New Trial Granted Upon the Following Causes, or Any of Them, Which Causes Materially Affect the Substantial Rights of the Said Defendants:

1. Irregularity in the proceedings of the adverse party, in that the names of various persons generally known to the jury as having nefarious occupations or as being notorious were unjustifiably linked with the names of the defendants and thereby prejudiced the rights of the defendants.

2. The damages awarded were excessive and appear to have been given under the influence of passion or prejudice. The evidence was insufficient to justify the verdict.

3. The verdict is against law.

4. Error in law occurred at the trial and was excepted to by the defendants in that the issues were confused by the admission of irrelevant testimony concerning the purchase of equipment by the plaintiffs, the circumstances of the arrest of one plaintiff for having in his possession illegal moose meat, the refusal of the court to instruct the jury that al-

leged acts occurring after 16 April, 1948, were immaterial, and evidence not related to the complaint was admitted over objections of the defendants.

This motion is based upon the records, files, and proceedings in this cause.

Dated at Anchorage, Alaska this 8th day of July, 1949.

/s/ RALPH H. COTTIS,

For Hellenthal, Hellenthal & Cottis Attorneys for Defendants.

Service of copy admitted.

[Endorsed] Filed July 8, 1949.

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[Title of District Court and Cause.]

## INSTRUCTIONS TO THE JURY

Ladies and Gentlemen of the Jury:

You are instructed as follows:

### 1.

This case is a civil case in which Vern Humphries and Marvin Campbell are plaintiffs and Laurence Starns, Joe Blackard and Glen Phillips are defendants.

In their amended complaint, which was filed on May 8, 1948, the plaintiffs allege that they are co-partners engaged in the restaurant business under the firm name and style of Alaska Food Service

and that said business was located in the premises described as the Panhandle Bar and Cafe, at 314 Fourth Avenue, in the city of Anchorage, Alaska; that defendants hold a leasehold right in said premises by virtue of a lease from Anna K. Campbell, the owner of the premises, to the defendants; that on or about the 4th day of February, 1948, at Anchorage, Alaska, the defendant Blackard entered into a written lease agreement with plaintiff, Humphries, a copy of which, as plaintiffs assert in their amended complaint, being attached thereto, whereby defendant, Blackard, agreed to lease to plaintiff, Humphries, for the period of one year, space in said premises adequate for the operation of a restaurant business and whereby defendant, Blackard, further agreed to furnish space, light, heat and water necessary for such operation and to provide the utensils and equipment for such operation; that it was further agreed by the terms of said agreement that plaintiff would pay to defendant as rental for said premises 6 per cent of the gross receipts derived from all operations of said restaurant business or the sum of \$200.00, per month whichever might be the greater; that pursuant to an offer by defendant Blackard and accepted by plaintiff Humphries, said agreement of lease was entered into, duly signed by both parties and possession of said restaurant premises delivered to plaintiff, Humphries, from defendant in accordance with the terms of said agreement; that relying on said agreement plaintiff expended large sums of money in the



construction of a counter upon said premises and expended further sums of money for modern fixtures and equipment necessary for said restaurant business including ranges, stools and other necessary fixtures and equipment; that said counter and equipment was located in the southwest portion of said Panhandle premises and was there so located at the direction of the defendants; that plaintiffs at the time of filing said amended complaint were entitled to the possession of said restaurant premises in accordance with the agreement mentioned; that plaintiff performed all of the things and conditions required by said agreement to be performed by the lessee; that plaintiff commenced the operation of said restaurant business on or about March 6, 1948, and that after the commencing of said business, defendants maliciously, wilfully and wantonly interfered with plaintiffs' business resulting in great loss of profits to plaintiff; that on or about April 20, 1948, defendants took possession of plaintiffs' store-room, a part of said leased premises, and failed and refused to permit plaintiff the use thereof; that defendants refused and neglected to provide plaintiffs with light, heat and water for said restaurant business as required by said agreement, to plaintiffs' damage in the sum of \$575.00; that defendants maliciously, wilfully and unlawfully operated and conducted gambling games, interfering with and otherwise being detrimental to plaintiffs' business, whereby plaintiffs' business was damaged; that defendants wilfully and maliciously injured plaintiffs'

credit rating much to plaintiffs' damage; that on or about May 5, 1948, the defendants did with deliberate intent to injure plaintiff, maliciously, wilfully and wantonly prohibit the delivery of fuel oil to plaintiff whereby plaintiffs sustained damage; that on or about May 5, 1948, at the hour of 1:30 o'clock in the morning of said day the defendants took possession of plaintiffs' restaurant premises, shut off the cook range, locked the premises and announced to plaintiffs' customers that the premises were permanently closed and plaintiffs were no longer to have possession thereof, thereby seriously injuring plaintiffs' business; that defendants threatened plaintiff with physical violence should plaintiff attempt to continue operating their restaurant business; that because of the acts of defendants, plaintiffs have been damaged in the sum of \$10,575.00.

The plaintiffs asked for judgment against the defendants in the sum of \$10,575.00 in actual damages and in the additional sum of \$10,000.00 in exemplary damages.

It appears from the undisputed testimony that since this action was brought the premises in question has been destroyed by fire. Accordingly the prayer of the plaintiffs' amended complaint that the defendant be restrained and enjoined from interfering with plaintiffs' business can not be granted and this action is now resolved into an action ~~at law~~ to determine whether or not the plaintiffs are entitled to recover any damages from the defendants by reason of the evidence given in support of the plaintiffs' amended complaint.



To the plaintiffs' amended complaint, the defendants on June 15, 1949, filed an answer admitting the allegations of Paragraphs 1 and 2 of the amended complaint and denying all other averments contained in the amended complaint. You will observe that Paragraphs 1 and 2 of the amended complaint allege that plaintiffs are co-partners engaged in the restaurant business under the firm name and style of Alaska Food Service, and that the business at the time of the filing of the amended complaint was located in the Panhandle Bar and Cafe, at 314 Fourth Avenue, in the city of Anchorage, Alaska, and that the defendants held a leasehold right in said premises by virtue of a lease from the owner, Anna K. Campbell, to the defendants. It is, therefore, obvious that the defendants have denied all of the averments which in any manner allege that the plaintiffs have been damaged by any acts or omissions of the defendants. The foregoing constitutes a condensed statement of what the respective parties assert in their pleadings in this case. When you retire to consider of your verdict you will take with you to the jury room the pleadings in the case consisting of plaintiffs' amended complaint and the defendant's answer thereto so that you may there read and consider said pleadings and determine the precise nature of the respective claims of the plaintiffs and of the defendants as stated in their pleadings.

#### 1-A

In their amended complaint, the plaintiffs state that a copy of the alleged lease is attached to and

made a part of the amended complaint, but the plaintiff, Humphries, in his testimony stated, in substance, that the written agreement on which the plaintiffs rely differs in some respects from the agreement of which a copy is attached to the plaintiffs' amended complaint, and that the agreement finally entered into between the parties is the one of which a copy is attached to the amended complaint in cause No. A-5001, introduced in evidence during the trial and marked plaintiffs' Exhibit No. 3. Plaintiff, Humphries, in his testimony also asserted that the final written agreement entered into between the parties was thereafter modified by oral agreement or agreements, concerning the furnishing of a bond and otherwise.

~~The defendants, Blackard, and Starns, in their his testimony have has denied the assertions of the plaintiff, Humphries, as regards the final written agreement and the oral modifications thereof.~~

Nothing in the law prevents or forbids the change, alteration or modification by oral agreement of such a written agreement as that relied upon here by either the plaintiff or the defendant.

It is for you to determine from all of the evidence what agreements, oral or written, or both, were entered into between plaintiffs and defendants.

In this case, as in all civil cases, the burden is upon the plaintiffs to prove their case by a preponderance of the evidence only, and not, as in criminal cases, beyond reasonable doubt. Preponderance of evidence means the greater weight of evi-

dence. If the evidence in your mind is equally balanced as between the plaintiffs and defendants, then the verdict should be for the defendants, because the burden is upon the plaintiffs to present evidence of greater weight than that in favor of the defendants before plaintiffs are entitled to recover.

## 7.

The jury is instructed that they should bring to bear upon the consideration of the evidence or lack of evidence in this case all of the common knowledge of men and affairs which they, as reasonable human beings, have and exercise in everyday affairs of life. Accordingly, you should draw from the evidence or lack of evidence in this case all deductions which appear to you to flow logically from the evidence or lack of evidence. Whatever verdict is warranted by the evidence under the instructions of the Court, you should return as you have sworn to do.

## 8.

The laws of Alaska provide that all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are to be decided by the Court, and all discussions of law addressed to the Court; and although the jury has the power to find a general verdict, which includes questions of law as well as fact, you are not to attempt to correct by your verdict what you may believe to be errors of law upon the part of the Court.

All questions of fact, other than those heretofore mentioned in these instructions, must be decided by the jury, and all evidence thereon addressed to them. Since the law places upon the Court the duty of deciding what testimony may be admitted in the trial of the case, you should not consider any testimony that may have been offered and rejected by the Court, or admitted and thereafter stricken out by the Court.

You are the sole judges of the credibility of the witnesses. In determining the credit you will give to a witness and the weight and value you will attach to his testimony you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to and feeling for or against any of the parties to the case; the probability or improbability of the statements of such witness; the opportunity he had to observe and be informed as to matters respecting which he gave evidence before you; and the inclination he evinced in your judgment, to speak the truth or otherwise as to matters within his knowledge.

Dated at Anchorage, Alaska this 5th day of July, 1949.

/s/ ANTHONY J. DIMOND,  
District Judge.

[Endorsed]: Filed July 6, 1949.

In the District Court for the Territory of Alaska,  
Third Division  
No. A-4979

VERN HUMPHRIES and MARVIN CAMP-  
BELL,

Plaintiffs,

vs.

LAURENCE STARNES, JOE BLACKARD and  
GLEN PHILLIPS,

Defendants.

### JUDGMENT

This cause having come on regularly for trial on the 21st day of June, 1949, and having been concluded on the 6th day of July, 1949, the plaintiffs having appeared in person and by their counsel, Stanley J. McCutcheon, Esq., and the defendants having appeared in person and by their counsel, Ralph Cottis, Esq.; a jury of twelve persons having been regularly impanelled and sworn to try said action, witnesses on the part of plaintiffs and defendants having been sworn and examined, and after hearing the evidence, and the instructions of the Court, the jury retired to consider their verdict and subsequently returned into court with the verdict signed by the foreman, and found in favor of the plaintiffs by the following verdict:

#### Verdict

We, the jury, duly sworn and empanelled to try the above-entitled cause, do find for the plaintiffs and against the defendants, Laurence Starnes and



Joe Blackard, and find that the plaintiffs are entitled to recover of and from said defendants the sum of Five Thousand Nine Hundred Thirty Five Dollars (\$5,935.00) as compensatory damages, and further find that the plaintiffs are entitled to recover of and from said defendants, Laurence Starns and Joe Blackard, the additional sum of Two Thousand Five Hundred Dollars (\$2,500.00) as punitive damages.

Dated at Anchorage, Alaska, this 6th day of July, 1949.

/s/ MAURICE A. STAFFORD,  
Foreman.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said plaintiffs have and recover from said defendants, the sum of Eight Thousand Four Hundred Thirty Five Dollars (\$8,435.00), with interest thereon at the rate of Six (6) per cent per annum from the date hereof until paid, together with plaintiffs' costs and disbursements incurred in this action, amounting to the sum of..... Dollars, plus attorney's fees in the sum of six hundred Twenty & no/100 Dollars.

Dated at Anchorage, Alaska, this 4th day of November, 1949.

/s/ ANTHONY J. DIMOND,  
Judge of the District Court.

[Endorsed]: Filed November 4, 1949.

[Title of District Court and Cause.]

### MOTION FOR FINDINGS OF FACT

Comes Now the defendant, Laurence Starns, by his attorneys, Hellenthal, Hellenthal and Cottis, and moves this Court that counsel for both the plaintiffs and the defendants be required to submit proposed findings of fact, and the Court enter such findings as it may deem appropriate.

This motion is based upon the records and files herein.

/s/ RALPH H. COTTIS,

For Hellenthal, Hellenthal and Cottis, Attorneys for Plaintiff.

[Endorsed]: Filed November 8, 1949.

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[Title of District Court and Cause.]

### HEARING ON MOTION TO REQUIRE FINDINGS OF FACT

Now at this time hearing on motion to require findings of fact in cause No. 2-4979, entitled Vern Humphries and Marvin Campbell, Plaintiffs, versus Laurence Starns, Joe Blackard and Glenn Phillips, Defendants, came on regularly before the Court, the plaintiffs not being present but represented by Stanley J. McCutcheon, of their counsel, the defendants not being present but represented by Ralph H.

Cottis, of their counsel. The following proceedings were had, to wit:

Argument to the Court was had by Ralph H. Cottis, for and in behalf of the defendant.

Argument to the Court was had by Stanley J. McCutcheon, for and in behalf of the plaintiff.

Whereupon the Court having heard the arguments of respective counsel and being fully and duly advised in the premises, denied motion.

Entered Nov. 18, 1949.

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[Title of District Court and Cause.]

## NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS

Notice Is Hereby Given that Laurence Starns, one of the defendants above named, does hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 4th day of November, 1949.

/s/ RALPH H. COTTIS,  
For Hellenthal, Hellenthal and Cottis, Attorneys for  
the Appellant Laurence Starns.

[Endorsed]: Filed November 14, 1949.



[Title of District Court and Cause.]

ORDER

The defendant Laurence Starns through his attorneys having filed herein a motion supported by affidavit praying for an extension of time for filing the record and docketing the appeal in this cause with the Appellate Court; and it appearing to the satisfaction of this Court that good reason exists for such extension, Now Therefore,

It Is Ordered, Adjudged and Decreed that the defendant Laurence Starns have to and including the 90th day from the date of filing the notice of appeal in which to file the record and docket the appeal.

Done in open court at Anchorage, Alaska, the 15th day of December, 1949.

/s/ ANTHONY J. DIMOND,  
District Judge.

[Endorsed]: Filed December 15, 1949.

In the District Court for the Territory of Alaska  
Third Division  
No. A-4979

VERN HUMPHRIES AND MARVIN CAMP-  
BELL,

Plaintiffs,

vs.

LAURENCE STARNES, JOE BLACKARD and  
GLEN PHILLIPS,

Defendants,

OPINION

McCUTCHEON & NESBETT,  
Attorneys for Plaintiffs.

HELLENTHAL, HELLENTHAL & COTTIS,  
Attorneys for Defendants.

Defendants have filed objections to plaintiffs' amended cost bill, the controversial items of which are as follows:

“Witness fees:

|  |          |
|--|----------|
| “Harry Prator, 7 days @ \$6.00 . . .   | \$ 42.00 |
| “Jack Barrett, 7 days @ \$6.00 . . . . | 42.00    |
| “Harry Andrews, 7 days @ \$6.00 . .    | 42.00    |
| “Frank V. Jones, 7 days @ \$6.00 . .   | 42.00    |
| “Howard Robinson, 7 days @ \$6.00      | 42.00    |
| “Jack Castlio, 7 days @ \$6.00 . . . . | 42.00    |
| “Dorothy Cavin, 7 days @ \$6.00 . .    | 42.00    |
| “Eldon Helgelien, 7 days @ \$6.00 . .  | 42.00    |

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“\$336.00” .

“Expenses incurred in travel for Attorney William Alward from his home in Herington, Kansas, to Anchorage, Alaska, and return to represent plaintiffs in default proceedings held in above case on or about the 13th of May, 1948.....\$857.28

“Mileage fees:

“Vern Humphries, from Kansas City to Anchorage, Alaska, and return for default proceedings and for trial of action @ 10c per mile from Kansas City to Juneau, Alaska, and @ 22c per mile from Juneau to Anchorage, Alaska.\$1,714.16

“Marvin Campbell, from Kansas City to Anchorage, Alaska and return for default proceedings and for trial of action @ 10c per mile from Kansas City to Juneau, Alaska, and @ 22c per mile from Juneau to Anchorage, Alaska.\$1,714.16

“Vern Humphries—days necessarily absent from home—13 days @ \$6.00 per day.....\$78.00

“Marvin Campbell—days necessarily absent from home—13 days @ \$6.00 per day.....\$78.00”

1. The defendants object to the allowance of \$3.00 for marshal's fees for service upon the defendant Glen Phillips, upon the ground that no judgment was entered against that defendant. This objection should be sustained, 20 C.J.S. 453, the text reading as follows: “where part of the defendants are successful and part are unsuccessful, the cost of bringing the successful defendants into Court

should be taxed against plaintiff and not against the unsuccessful defendants.” This rule is stated in *Victor v. Adams*, 106 So. 435 (Miss. 1926).

2. The defendants next object to all witness fees above the sum of \$3.00 per day. With respect to this objection it is first necessary to look to the pertinent statutes. Section 25, 48 U.S.C.A. provides:

“In case the law requires or authorizes any services to be performed or any act to be done by any official or person within the Territory of Alaska, and provides no compensation therefor, the Attorney General may prescribe and promulgate a schedule of such fees, mileage, or other compensation as shall be by him deemed proper for each division of the court, and such schedule shall have the force and effect of law; \* \* \*

Sec. 55-11-52 A.C.L.A. 1949 provides that:

“Costs are allowed, of course, to the plaintiff upon a judgment in the district court in his favor in the following cases:

“Fifth, In an action not hereinbefore specified, for the recovery of money or damages, when the plaintiff shall recover fifty dollars or more.”

Sec. 55-11-55 A.C.L.A. 1949 provides:

“A party entitled to costs shall also be allowed for all necessary disbursements, including the fees of officers and witnesses, \* \* \*

witness fees for each day a witness is necessarily absent from his usual place of abode by reason of attendance upon court, with traveling expenses at fifteen cents per mile actually and necessarily travelled \* \* \*

On the basis of these statutes, the Attorney General issued a schedule of fees for witnesses, effective February 1, 1945, in which it provided that the witnesses should have:

“For attendance on the district court \* \* \* and for time necessarily occupied in traveling from their residence and returning from the place of trial or hearing, per day, \$3.00.

“In addition to the above, witnesses \* \* \* who attend court \* \* \* at points so far removed from their respective residences as to prohibit return thereto from day to day, shall when this fact is certified to in the certificate of the United States Attorney or order of the commissioner for payment, be entitled to a per diem of \$3 for expenses of subsistence for each day of attendance and for each day necessarily occupied in traveling to attend court and return home \* \* \* \$3.00.”

Accordingly, witnesses are entitled to more than three dollars a day, when they reside too far from the court to return home at night. The cost bill is defective in that it does not set forth the place of residence of the witnesses. *Qualley v. Aitken*, 4 Alaska 291, 296. The court cannot charge defend-

ants with subsistence for the witnesses since they may be able to return to their places of residence at the end of each day. On the basis of the amended cost bill as submitted, the objection must be sustained.

3. The amended cost bill asks that witness fees be allowed each of eight witnesses for a period of seven days. If it is necessary for a witness to be in attendance throughout a long trial he is entitled to witness fees even though the trial was an extended one. *Donato v. Parker Pen Co.*, 7 F.R.D. 148 (1945). In the case of *Qualley v. Aitken*, *supra*, the cost bill contained an item charging witness fees for 30 days attendance; however, this witness had not been subpoenaed and there was no showing in the cost bill as to the number of days he was in attendance, although court records show that he was only called to testify one day. The court allowed witness fees for only one day. If a material witness who testifies is required to remain in attendance throughout the trial such attendance is presumed necessary in the absence of a showing to the contrary, and the per diem may be allowed for each day he was in attendance whether he testified or not. *United States v. Hoxie*, 8 Alaska, 210 (1930). It has also been held that where plaintiff's affidavit that witness was in attendance in court for six days was the only proof offered, allowance of witness fees for six days was proper. *Reidy v. Myntti*, 9 Alaska 639 (1940).



It is now necessary to determine whether the information set forth in the amended cost bill is sufficient to justify allowance of fees for six days for each of the eight witnesses named. The statements in the amended cost bill on this point are brief in the extreme, and do not show that these witnesses were ever in attendance or that any of them testified. The plaintiffs may not be allowed such fees on the basis of the amended cost bill as it now stands.

4. The amended cost bill also contains a charge of \$857.28 as expenses incurred in travel by Attorney William Alward from his home in Kansas to Anchorage and return, to represent plaintiff in default proceedings held in this case, on or about May 13, 1948. The record is barren of anything to show that Mr. Alward ever appeared as attorney for the plaintiffs in this action. Nothing in the law authorizes the payment of traveling expenses of an attorney, who resides in one of the States, to Alaska and return, in order to represent the prevailing party in any suit in the District Court of Alaska. Evidently, the item of costs covering the traveling expense of William Alward is not based upon any claim for attorney's fees. The defendants' objections to this item in the cost bill are sustained.

5. The defendants object to the mileage fees charged for plaintiff Vern Humphries on several grounds. The objection based upon the ground that Humphries is a party to the action is not tenable.



Farno v. Coyle, 75 F. (2d) 692, 695 (1935). The further objections of defendants that plaintiff Humphries did not testify is completely without basis in fact since the record shows that he did testify at some length. The circumstances that plaintiff Humphries testified voluntarily rather than under subpoena, does not deprive him of the right to witness fees. Gallagher v. Union Pacific Ry., 7 F.R.D. 208, 209 (1947); Qualley v. Aiken, *supra*.

The question then arises whether mileage should be allowed for the entire trip or for only a part thereof. A majority of the Federal decisions hold that mileage is recoverable only for such distances as is necessarily traveled by a witness from a point to which a subpoena will run. 20 C.J.S. 479, 480; Kirby v. U. S., 273 F. 391, 396 (9th Cir. 1921). In the year 1926 when the law now embraced in Section 58-3-7 ACLA 1949 was in effect, the Court of Appeals for the Ninth Circuit held that a subpoena issued by the District Court of Alaska will run to any point in the Territory, which is really one Judicial District. Deal v. United States, 11 F. (2d) 3, 8, 9. In this opinion the words "District" and "Territory" appear to have been used interchangeably. Upon appeal, the Supreme Court disagreed, but that disagreement was apparently based upon the theory that the word "District" means something else than the word "Territory" as applied to the Judicial District and Territory of Alaska. Moreover, it is common knowledge that every divisional

branch of the District Court of Alaska has Territorial jurisdiction over the entire Territory or District. Subpoenas issued out of the District Court for the Third Division of the Territory of Alaska at Anchorage, upon proper order, will run in every other Division and must be obeyed by witnesses subpoenaed at points as remote from Anchorage as Ketchikan in the First Division or Barrow in the Second Division, some 1,500 miles apart.

Accordingly, in view of all of the law on the subject, as it existed at the time of trial, it appears that plaintiff Humphries is entitled to mileage from the place where he entered the Territory to his destination at Anchorage, the place where the trial was had, and return, and no more, at the rate of 15 cents per mile.

Defendants further object on the ground that plaintiff Humphries was in Anchorage not only to testify in this case but also in connection with Causes A-5001 and A-5030. Humphries was a party to Cause No. A-5001 and actually testified therein but he was not a party to Cause No. A-5030 nor did he testify therein although subpoenaed by the defendant. The opinions of the Courts are not in harmony on the subject. The matter was considered by the Court of Appeals, Ninth Circuit, in *National Union Fire Ins. Co. v. California C. Credit Corp. & General Ins. Co. of America v. same defendant*, 76 F. (2d) 279 (1935). In those cases the parties had agreed that the testimony for both cases could be taken in the same hearing, and the

witnesses testified only once. The trial court allowed full witness fees and mileage costs in each case. On appeal this was held to be proper. The opposite result was reached in *McKee v. Clark*, 144 P. (2d) 1000. The allowance of full mileage fees and attendance fees in each case appears to be the majority rule. The *Vernon*, 36 F. 113; *Archer v. Fire Insurance Co.*, 31 F. 660; *Young v. Merchants Ins. Co.*, 29 F. 273. The ruling of the Court of Appeals for the Ninth Circuit must prevail in this Court. The objections of defendants here upon the ground mentioned are overruled.

6. With respect to plaintiff Marvin Campbell, it may be pointed out that he did testify as a witness not only in this case but also in Causes Nos. A-5001 and A-5030. The objection made upon the ground of his having testified in the other cases is untenable in view of the decision of the Court of Appeals in *National Fire Insurance Co. v. California C. Credit Corp.*, *supra*. All rulings of the court in connection with plaintiff Vernon Humphries are also applicable to plaintiff Marvin Campbell.

7. Defendants also objected to allowance of attendance and subsistence fees for plaintiffs Humphries and Campbell. Parties to an action may recover witness fees as costs on the same basis as other persons. *Farno v. Coyle*, *supra*. It is to be presumed that both of the plaintiffs were obliged to be in attendance at the trial during the entire time it was before the Court. Witness fees may not be denied by virtue of the fact that witnesses

are not subpoenaed, *Qualley v. Aitken*, supra, or by virtue of the fact that any witness came from a distance of more than one hundred miles. *Gallagher v. Union Pacific Ry.*, supra; *Deal v. United States*, supra. Accordingly, the objections of the defendants to the last two items above-listed on the plaintiffs' cost bill must be overruled.

While it has no bearing on the case at hand, it is worthy of note that the schedule of witness fees issued by the Attorney General and above-referred to has been revised, the new fee schedule being effective October 25, 1949. This revised fee schedule provides for an allowance of \$4.00 per day for attendance and \$5.00 per day additional for subsistence for witnesses who live at a place so far removed as to prohibit their return home from day to day.

Because it appears that the plaintiffs are justly entitled to more of the costs and disbursements claimed than may be approved under the amended cost bill filed, leave is given to plaintiffs to file a second amended cost bill within ten days of the date hereof and the defendant may have five days thereafter within which to file objections. If no amended cost bill is filed, an order may be drawn in harmony with this opinion.

Dated at Anchorage, Alaska, this 30th day of December, 1949.

/s/ ANTHONY J. DIMOND,  
District Judge.

[Endorsed]: Filed December 30, 1949.

[Title of District Court and Cause.]

## SECOND AMENDED COST BILL

Comes now the plaintiffs in the above-entitled action and file the following Second Amended Cost Bill in the above action:

Marshal's fees for service of process on Laurence Starns and Joe Blackard @ \$3.00.....6.00  
Clerk's filing fees in the above action.....\$21.00

Witness fees:

Harry Prator, witness for plaintiffs in the above-entitled action, having testified in behalf of plaintiffs, was necessarily present at Court for the period of 7 days @ \$3.00.....\$21.00

Jack Barrett, witness for plaintiffs in the above-entitled action, having testified in behalf of plaintiffs, was necessarily present at Court for the period of 7 days @ \$3.00.....\$21.00

Harry Andrews, witness for plaintiffs in the above-entitled action, having testified in behalf of plaintiffs, was necessarily present at Court for the period of 7 days @ \$3.00.....\$21.00

Frank V. Jones, witness for plaintiffs in the above-entitled action, having testified in behalf of plaintiffs, was necessarily present at Court for the period of 7 days @ \$3.00.....\$21.00

Howard Robinson, witness for plaintiffs in the above-entitled action, having testified in behalf of



plaintiffs, was necessarily present at Court for the period of 7 days @ \$3.00.....\$21.00

Jack Castlio, witness for plaintiffs in the above-entitled action, having testified in behalf of plaintiffs, was necessarily present at Court for the period of 7 days @ \$3.00.....\$21.00

Dorothy Cavin, witness for plaintiffs in the above-entitled action, having testified in behalf of plaintiffs, was necessarily present at Court for the period of 7 days @ \$3.00.....\$21.00

Eldon Helgelien, witness for plaintiffs in the above-entitled action, having testified in behalf of plaintiffs, was necessarily present at Court for the period of 7 days @ \$3.00.....\$21.00

Attorney's fees.....\$620.00

Mileage fees for Vern Humphries, plaintiff in the above-entitled action, whose residence is Kansas City, from the point where said witness entered the Territory of Alaska, to Anchorage, Alasaka, a distance of 850 miles, at 15c per mile, for attendance in the trial of the above-entitled action, and return of the said Vern Humphries to that point where he left the Territory of Alaska on his way to his home in Kansas City, a distance of 850 miles at 15c per mile.....\$255.00

Mileage fees for Vern Humphries, plaintiff in the above-entitled action, whose residence is Kansas City, from the point where said witness entered the Territory of Alaska, to Anchorage, Alaska, a

distance of 850 miles, at 15c per mile, for attendance in the default proceedings had in the above-entitled action, whereby plaintiff was granted an order of default for defendant's failure to appear, and return of the said Vern Humphries to that point where he left the Territory of Alaska on his way to his home in Kansas City, a distance of 850 miles at 15c per mile.....\$255.00

Mileage fees for Marvin Campbell, plaintiff in the above-entitled action, whose residence is Kansas City, from the point where said witness entered the Territory of Alaska, to Anchorage, Alaska, a distance of 850 miles, at 15c per mile, for attendance in the trial of the above-entitled action, and return of the said Marvin Campbell to that point where he left the Territory of Alaska on his way to his home in Kansas City, a distance of 850 miles at 15c per mile.....\$255.00

Mileage fees for Marvin Campbell, plaintiff in the above-entitled action, whose residence is Kansas City, from the point where said witness entered the Territory of Alaska, to Anchorage, Alaska, a distance of 850 miles, at 15c per mile, for attendance in the default proceedings had in the above-entitled action, whereby plaintiff was granted an order of default for defendant's failure to appear, and return of the said Marvin Campbell to that point where he left the Territory of Alaska on his way to his home in Kansas City, a distance of 850 miles at 15c per mile....\$255.00



Witness fees for Vern Humphries, whose residence is Kansas City, Kansas, for the period of 13 days necessarily spent in traveling from his residence to Anchorage, Alaska, the place of the trial of the above-entitled action, time spent in attendance at Court, and return to his place of residence at Kansas City, the period of 13 days at \$6.00 per day.....\$78.00

Witness fees for Marvin Campbell, whose residence is Kansas City, Kansas, for the period of 13 days necessarily spent in traveling from his residence to Anchorage, Alaska, the place of trial of the above-entitled action, time spent in attendance at Court, and return to his place of residence at Kansas City, the period of 13 days at \$6.00 per day.....\$78.00

Vern Humphries—days necessarily absent from his home in Kansas City, Kansas, while attending the hearing on default proceedings as above-mentioned, 10 days @ \$6.00 per day.....\$60.00

Marvin Campbell—days necessarily absent from his home in Kansas City, Kansas, while attending the hearing on default proceedings as above-mentioned, 10 days @ \$6.00 per day.....\$60.00

Total .....\$2,111.00

United States of America,  
Territory of Alaska,  
Third Division—ss.

Stanley J. McCutcheon, being duly sworn, deposes

and says: That he is the attorney for the plaintiffs in the above-entitled cause, and as such is better informed relative to the above costs and disbursements than the said plaintiffs, that the items in the above memorandum contained are correct, to the best of deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

S. J. McCUTCHEON.

Subscribed and Sworn to before me this 9th day of January, 1950.

/s/ VIRGINIA E. JOHNSON,  
Notary Public in and for  
Alaska.

My commission expires 3/30/53.

[Endorsed]: Filed January 9, 1950.

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[Title of District Court and Cause.]

OBJECTIONS TO SECOND AMENDED  
COST BILL

Comes Now the defendant Laurence Starns in the above-entitled cause by his attorneys Hellenthal, Hellenthal and Cottis, and makes the following objections to the plaintiffs' second amended cost bill:

1. Defendant objects to the allowance of witness fees beyond an aggregate of \$15.00 each for the following witnesses: Harry Prator, Jack Barrett,

Harry Andrews, Frank V. Jones, Howard Robinson, Jack Castlio, Dorothy Cavin, and Eldon Helgelien. This objection is based upon the ground that plaintiff rested after five days and the said witnesses were no longer required to be in court.

2. In addition to the foregoing general objection, defendant objects to the allowance for witness fees for Jack Barrett and Howard Robinson for more than one day each because defendant is informed and believes that neither of said witnesses was present in court for more than a portion of one day; and that the presence of neither was necessary for more than one day.

3. Said defendant objects to the allowance of \$255.00 for mileage fees for Vern Humphries "from the point where said witness entered the Territory of Alaska to Anchorage, Alaska, a distance of 850 miles, at 15c per mile, for attendance in the trial . . ." This objection is upon the following grounds:

Said defendant is informed and believes that Humphries came to Anchorage via Northwest Airlines from Seattle, and that the point of entry over territorial waters and/or lands was certainly not further from Anchorage than Middleton Island, a distance of 179.46 miles, and may well have been even nearer to Anchorage. Defendant objects to the entire mileage allowance upon the grounds that it does not show specifically the point of entry and is therefore too indefinite. Defendant further objects to all mileage exceeding 179.46 miles, or the sum of \$53.85 for round trip to and from Middleton Island.

Without limiting the foregoing, defendant further objects to the requested allowance insofar as it exceeds 100 miles each way, upon grounds that no order of the court was granted for endorsement on a subpoena which would have validated service of a subpoena upon a witness at a distance of more than 100 miles. Defendant further objects to said requested allowance upon the grounds that the reasoning of the court as set forth in its opinion of 30 December, 1949, with respect to Humphries' mileage allowance is based upon the theory that a subpoena could have been served when the said witness was within three miles of the coast line of Alaska; defendant objects upon grounds that as a practical matter no such service could have been effected until the airplane had actually landed in Alaska; defendant is informed and believes that the said airplane first landed in Alaska at Elmendorf Airbase, Fort Richardson, and therefore objects to all mileage other than the round trip between the City of Anchorage and Elmendorf Airbase. Defendant further objects to the allowance of any return mileage for Humphries upon the ground that his return was in violation of a subpoena issued by this court in Cause A-5030; to encourage the commission of such crimes by the allowance of mileage fees incurred in violation of a court order is neither just, equitable, nor sensible.

4. With respect to the second mileage allowance requested for the witness Humphries, defendant reiterates the foregoing objections and re-alleges

his former objection, namely, that Humphries did not testify in connection with any default proceedings nor was his presence necessary in connection with any default proceeding, since any such proceeding was heard on motion supported by affidavit and any affidavit of Humphries could have been taken without his coming to Anchorage; in fact, defendant does not find that Humphries even filed an affidavit in connection with any such proceeding. Said defendant further objects to such allowance upon grounds that no costs were awarded either party in connection with any default proceeding, and that if Humphries was going to claim costs such claim should have been made a part of the relief requested and granted at that time.

5. Defendant's objections to the first mileage fees for Marvin Campbell are the same as those set forth in paragraph 3 hereof with respect to Humphries excepting that the last sentence of said paragraph is not applicable.

6. With respect to the second mileage fees requested for Campbell, defendant's objections are the same as those set out in paragraph 4 hereof with respect to Humphries.

7. Defendant objects to "witness fees" for Vern Humphries in excess of \$3.00 per day; and if "witness fees" is construed to include subsistence allowances, defendant objects to such allowances because no certificate of the U. S. attorney or order of the commissioner has been presented in accordance with



the attorney general's schedules. Defendant objects to any allowance for time spent in Anchorage beyond the five days during which plaintiffs presented their case and objects to any allowance for traveling time beyond 100 miles and to any allowance for travel time upon the further ground that the length of time spent in traveling is not sufficiently shown. Defendant objects to any allowance beyond five days upon the ground that Humphries stayed for the balance of the trial, not as a witness, but as a party.

8. Defendant's objections to the \$78.00 "witness fees" for Campbell are the same as those in the preceding paragraph with respect to Humphries.

9. Defendant's objections to the allowances requested for Humphries and Campbell in the last two paragraphs of the second amended cost bill are the same as those set forth in paragraph 4 with respect to Humphries' mileage for attendance at "default proceedings."

/s/ RALPH H. COTTIS,  
For Hellenthal, Hellenthal & Cottis, Attorneys for  
Defendant Starns.

[Endorsed]: Filed January 14, 1950.

[Title of District Court and Cause.]

# ORDER

Coming on regularly to be heard the second amended cost bill of the plaintiffs filed herein on January 9, 1950, and the objections thereto of defendants filed herein on January 14, 1950; and the Court having heard the arguments of counsel for the respective parties, and being fully advised in the premises; it is

Ordered that the objections of defendants to the following listed items of plaintiffs' cost bill are sustained and the items will not be included in the costs allowed plaintiff in this action:

1. Mileage fees for Vern Humphries, plaintiff, for attendance at the default proceedings had in the above-entitled action. . . . . \$255.00
  2. Mileage fees for Marvin Campbell, plaintiff, for attendance at the default proceedings had in the above-entitled action. . . . . 255.00
  3. Witness fees for Vern Humphries, plaintiff, while attending the hearing on default proceedings as above-mentioned. . . . . 60.00
  4. Witness fees for Marvin Campbell, plaintiff, while attending the hearing on default proceedings as above-mentioned. . . . . 60.00
- 
- Total . . . . . \$630.00



And it is further

Ordered that the second amended cost bill, except as to the items above listed, is allowed and approved and the total amount of the approved items, namely: One Thousand Four Hundred and Eighty-One Dollars (\$1,481.00) may be entered in the judgment in favor of plaintiffs and against defendants heretofore given and rendered in this action on November 4, 1949.

Done by the Court and ordered entered at Anchorage, Alaska, this 24th day of February, 1950.

/s/ ANTHONY J. DIMOND,  
District Judge.

[Endorsed]: Filed February 24, 1950.

In the District Court for the Territory of Alaska  
Third Division

Civil Action No. A-4979

VERN HUMPHRIES and MARVIN CAMP-  
BELL,

Plaintiffs,

vs.

LAURENCE STARNES, JOE BLACKARD and  
GLEN PHILLIPS,

Defendants.

Before: The Honorable Anthony J. Dimond,  
United States District Judge.

Appearances:

STANLEY J. McCUTCHEON, and

BUELL A. NESBETT,

McCUTCHEON & NESBETT,

Attorneys at Law,

Appearing for plaintiffs.

RALPH H. COTTIS, and

JOHN S. HELLENTHAL,

HELLENTHAL, HELLENTHAL and  
COTTIS,

Attorneys at Law,

Appearing for defendants.

(Whereupon, at 4:15 o'clock p.m., the above-entitled matter came on for opening statements by counsel.)

### PROCEEDINGS

The Court: Counsel for plaintiffs may proceed to make an opening statement to the jury.

Mr. McCutcheon: If the Court please, Mr. Helenthal, Ladies and Gentlemen of the Jury.

The plaintiffs will try to show to you during the course of this trial that on or about the 4th of February in 1948 the defendant, Joe Blackard and Larry Starns, the owners of the Panhandle by leasehold right from Anna K. Campbell the true owner, the mother of Marvin Campbell, that Blackard and Starns were in possession of the Panhandle premises by virtue of their lease from Marvin's mother; that about the 4th of February in 1948 they entered into a sublease leasing the restaurant premises of the Panhandle premises to Vernon Humphries and a person by the name of Havens; that that agreement between Starnes and Blackard as leasehold owners of the premises and Mr. Humphries and Mr. Havens required that Mr. Blackard who signed the agreement for himself and Mr. Starns required that he pay for the light and the heat and the water and other obligations that he took on under the agreement; that in return for that Mr. Blackard was to receive six per cent of the gross receipts, which is about 25 per cent of the net profit, or that Mr. Humphries if the

six per cent of the gross amounted to less than \$200 per month that Mr. Humphries was to pay \$200 a month and not less. If you follow me? It is six per cent of the gross but if it fell [3\*] below \$200 a month then it was to be maintained at \$200 per month; that there was a restaurant in the premises at the time Mr. Blackard and Mr. Starns took it over; that that restaurant counter was located toward the front of the Panhandle premises; that the Panhandle premises were primarily a saloon or a cocktail bar; that after Mr. Blackard and Mr. Starns took it over they remodeled the place and the tenants that were in the restaurant business sold out to Mr. Humphries and Mr. Havens for the sum of \$2,500; that very shortly after the sale Mr. Havens sold to another party and that party was bought out by Mr. Humphries so that he owned the whole business, he having put up nearly all of the money in the first place; that Mr. Humphries had a stock—an inventory—at the time he went in the restaurant business in the Panhandle of the value of \$1,500; that Mr. Humphries had been in the restaurant business for the railroad feeding railroad employees and when that business was terminated with the railroad after the railroad took it over themselves again Mr. Humphries brought his stock, his inventory, along with him and that the value of it at that time was about \$1,500; and that in addition to his \$1,500 stock he bought several thousand dollars more in stock so that he

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\* Page numbering appearing at top of page of original Reporter's Transcript.

We will show that he maintained that inventory until he was forced to close down because of Mr. Blackard and Mr. Starns and Mr. Phillips; that the old counter was located to the front [4] of the Panhandle premises up by the window; that at the time they entered into the written agreement that we will introduce in evidence they had several oral agreements or verbal agreements in connection with the same transaction.

One of them was that the counter might be moved in the remodeling of the premises 18 feet to the rear which was agreed to in order to permit Mr. Starns to put his liquor store in the same premise; that it was agreed at that time, however, that the restaurant counter could be seen from the main street for business reasons so that people would know that there was a restaurant in there; and they further had an agreement as to advertising that Mr. Humphries could hang his sign so that it could be seen from the window where the old restaurant sign was hung; that in the remodeling of the premises they moved Mr. Humphries counter completely to the rear of the building and behind the liquor store premises so that the counter couldn't be seen; and in addition to that he had originally agreed with them that he should have as much space as was occupied by the former restaurant owner and that he might put a short "L" on the one single counter so that the "L" would reach out like this permitting him to put four more stools on there; that they didn't permit him to do that and he lost

four stools on the "L" of his counter and one stool off the original counter and that his business suffered accordingly; and that when they remodeled they moved his counter to the rear of the building he protested and saw his attorney, who was myself at the time, and that he [5] finally reached an agreement with Mr. Blackard and Mr. Starns with reference to the counter and with reference to the cost of moving.

This was after the agreement had been entered into at the beginning.

The agreement originally provided that Mr. Humphries must put up a bond under the original agreement. He was to put up a \$3,000 bond to Mr. Blackard and Mr. Starns protecting them against obligations, and it will be shown in the agreement, when we introduce it, when Mr. Humphries protested about moving the counter to the rear of the premises and when he protested that his counter was hidden behind the liquor store in order to make it right with him they agreed that he didn't have to post a bond; that shortly after he was in business they had an argument as to who was to pay for the electricity and that Mr. Blackard refused to pay for it and the City was about to turn it off and in order to protect himself Mr. Humphries was compelled to make a substantial deposit to the City, which was later on credited to Mr. Blackard's debt; that Mr. Blackard never at any time paid for any heat nor for lights nor water as he had agreed to in his original agreement; that shortly after they



had this disagreement Mr. Blackard attempted to put in a taxicab stand, which he later took out again, but in addition to the businesses that were in there which was the bar, the saloon part of it, and the restaurant, and Larry Starn's liquor store, Mr. Blackard [6] put in an airways office—Columbia Air Cargo Ticket Office—took down Mr. Humphries' restaurant sign and put it on the other side of the building and later took it down from there and put it in storage over Mr. Humphries' objection; that they had a considerable argument about that, and that I will develop, between them; that later on, shortly after the violent illwill developed between them, the saloon part of the premises started serving coffee, giving it to their customers at that time of the day when the restaurant enjoyed its biggest coffee trade, which are the morning hours.

We will show that Mr. Humphries expended a very considerable sum of money in remodeling his restaurant premises and in the purchase of equipment—meat saws, grinders, new utensils and a multitude of other items necessary for the restaurant business of the value in excess of \$10,000; that in the beginning, we will show you, they enjoyed a very profitable business and that their business declined and finally faded out completely due to the activity of Starns, Blackard and Phillips.

We will show you that Mr. Humphries and the gentleman who later became his partner, young Mr. Campbell, that they were only in business from the



time of the original agreement until they were compelled to terminate that they were only in business a brief period of time, less than 3 months, and that at the latter part of the period that they were in business Mr. Blackard served a notice on them and told them that their agreement was [7] terminated, and we will show you that there was a provision in the agreement whereby Mr. Blackard could terminate the agreement if some provision of that agreement were violated by Mr. Humphries or Mr. Campbell.

You will also be shown in the agreement that Mr. Humphries could terminate the agreement on 30 days' notice; that Mr. Blackard terminated the agreement, locked up the restaurant, ordered his customers out, took possession of his supplies and stores and put them out on the street; that they sought the advice of counsel and again regained possession of their premises and endeavored to hold it and to do business and to make a living but that Mr. Blackard continued to interfere by changing the locks on the door.

Mr. Humphries had a key to the original lock but Mr. Blackard changed the locks so that he couldn't come in and serve breakfast nor could he serve lunch because at the time the saloon opened until that time he was unable to get into the premises at all.

We will show you that he had a profitable breakfast and lunch trade but that Blackard compelled him to close up at all hours during the time when

the saloon was closed despite the fact that they had an agreement, as a matter of fact, at the original insistence of Blackard and Starns that the restaurant remain open for 24 hours.

Despite that original agreement that it remain open at [8] 24 hours on the original insistence of Blackard and Starns feeling that it would endorse their saloon business operating there 24 hours a day, they nevertheless limited them to business only when the saloon was open. We will show you that that was very damaging to the plaintiffs.

We will show you that Blackard and Starns after a period of time opened gambling games to the rear of the premises right where the restaurant counter was situated so that it was necessary for the plaintiffs' customers to wade through these gambling games and the players seated at the tables in order to get to the stools to eat.

We will show you that that was highly damaging to the plaintiffs' business; that the men who ran the games for Blackard and Starns solicited trade from the counter where plaintiff was serving meals and annoyed the customers and that some of their customers didn't return because of the gambling games that were going on; that some of them were working men and they lost their earnings there, and prior to that time they had eaten regularly in the restaurant and after losing their earnings refused to return at all and were never seen again in the restaurant thereby damaging the plaintiff; that, finally, it became so difficult to keep their business

because of the activity of Blackard and Starns that they were compelled to close down; that when they did they locked their inventory of \$2,000 approximately in one store room and \$1,800 in another [9] store room, plus \$10,000 worth of equipment, locked it up for safekeeping and filed a lawsuit; that Blackard and Starns and Phillips broke into the store room and endeavored to carry some of the provisions away; that it was necessary for plaintiff to call a Deputy United States Marshal to come to the premises to prevent the defendants from carrying away their supplies; that the Deputy United States Marshal compelled them to return the provisions and supplies to the store rooms where they had been locked up; that meat was contained in a sharp freezer; that the defendants took the meat out and endeavored to carry it away; that the meat was returned; that it thawed out and spoiled; that it was returned to the sharp freezer and that Blackard and the other defendants complained to the health authorities then immediately and that the health authorities came down and condemned the meat, but that this was after the restaurant had been closed; that plaintiffs had never been permitted to regain possession of their premises; that the defendants have taken possession of their inventory, their supplies and equipment and leased it out to a third party and that party sold to a fourth party, and that prior to the expiration of their year's agreement the premises burned completely and was a total loss.

And we will show that the defendants were responsible and that they converted—that is, responsible for converting the plaintiffs' goods and equipment to their own use and we expect, Ladies and Gentlemen, when we have shown you that, that you [10] will return a verdict in favor of the plaintiff for the damage that he has sustained.

The Court: Counsel for defendant may make an opening statement.

Mr. Cottis: May it please the Court, Ladies and Gentlemen of the Jury.

To hear the defense of this lawsuit we will have to go into the history of the situation a little bit. Here is what happened: Along in January of 1948, that is, a year ago last January, Hardy and Tibbetts were operating the Panhandle Bar and the Panhandle Restaurant which was situated in the same room as the bar. Joe Blackard, innocent sort of boy, who had been running a filling station, the Service Center, for Russell Swank here in town, decided that he would like to try the bar business and he bought the Panhandle Bar from Tibbetts and Hardy for \$20,000.

To pay that purchase price he had his own savings and he borrowed \$10,000 from Larry Starns and gave him back a chattel mortgage on the equipment in that bar. Then came the question of transferring the lease from Tibbetts and Hardy to Joe Blackard, and Mrs. Campbell, Marvin's mother in Seattle, stated that she would permit Tibbetts and Hardy to transfer the lease to Blackard if he would

pay \$100 more per month rental and it was a new lease and if he would pay an additional \$2,000 for the privilege of getting that assignment of lease, and they [11] did that and they agreed to it and they went in there along about the end of January, 1948. Starns was on the lease—or the assignment of this Tibbetts and Hardy lease because it is a very, very tight lease and there is a provision in there that whoever is running the premises can't sublet any part of the premises without the written consent of Mrs. Campbell.

Starns wanted to put a retail liquor store somewhere in that neighborhood so he made an agreement with Blackard that he would lend him the \$10,000 and he would go on the lease jointly with Blackard and in return he would have a small corner of the premises which he would wall off so that it wasn't connected with the rest of the area at all and he would have his liquor store in there.

They signed the lease and Blackard did considerable remodeling of the bar part of the premises and the restaurant part of the premises and Starns installed his liquor store.

Then, along the first part of February Blackard wanted to find somebody to operate his restaurant. He was new at this business. He had been in the gasoline station business for Russell Swank and he found Verne Humphries who had worked at the Frisco Cafe as a chef and at the railroad mess hall as a chef and he made this written agreement which you will see. It will be in evidence between



him and Humphries. Starns, of course, wasn't in it at all and I don't want you to be misled on that. But you will see the agreement. But Starns had nothing [12] to do with it. He had this little store—a retail package store—and that is all he had to do with the matter. Phillips wasn't concerned in the matter at that time. There was Blackard who made this agreement with Humphries and it was changed a little. Our office drew the agreement originally and McCutcheon and Nesbett put a few changes in it and it was signed in McCutcheon's office and it provides as Mr. McCutcheon has said that Humphries will operate the restaurant in the Panhandle.

That is between Blackard as the owner of the business there and Humphries and Havens, who is now out of it and Campbell is now here in his place, as the operators of the restaurant.

Mr. McCutcheon persisted in calling that agreement a lease agreement because if it is a lease, why, it violates the provision against subletting that is in that master lease. However, I think you will realize when you read the agreement that it is an agreement to employ Humphries there to run the kitchen.

Blackard already had the equipment there. He had the dishes and the pots and the pans and the stoves and the refrigerators and all the things that they do have in restaurants that he had bought for this \$20,000 from Tibbets and Hardy and he needed an operator.



But since the agreement had been originally drawn by us and had been gone over by another law firm with some changes, [13] there are provisions in it to protect Blackard against creditors of Humphries.

You know how it would be if you were a food supplier and somebody who was running a restaurant in the Panhandle Bar and Cafe, for example, called up for a case of corn flakes, you are dealing with the Panhandle in your own mind. You don't know whether it is Joe Blackard who is running the Panhandle and Humphries who is running the restaurant and whether they are partners or it is a corporation or what the dickens arrangement it is, you are a creditor, you bring up the corn flakes and you deliver them and you expect somebody to pay your bill. Now, to protect Joe from having to pay any bills that Humphries incurred in the restaurant business, because it was meant to be a separate operation there, we have put in the agreement various little things such as that Humphries would pay his own expenses as he went along in the operation; he would put up a bond for \$3,000 to protect Joe from any creditors of Humphries who might rely on Joe's credit standing and there are little provisions in there and we approved and the agreement was signed that way that Joe could terminate that agreement any time on 24-hours' notice in writing, and that Humphries could terminate it anytime on 30 days' notice. That would give Joe a chance to find a new restaurant oper-

ator, because the bar business and the restaurant business each hinged on each other. If you had people coming in there because they liked the food they would [14] occasionally buy a cocktail and it helped the food business if you had people in there because they liked the cocktails. They would occasionally get hungry and it helped the restaurant business. It was a thing that had to intermesh—the two businesses had to get along together.

Now, Humphries opened up in there and he started incurring bills and creditors started to heckle Blackard for them. There were grocery bills, there were construction bills, there were all sorts of things and then Humphries started to have something to do with moose meat around there. I am still not clear what it was, but it was, apparently, illegal. Holger S. Larsen of Fish and Wildlife charged Humphries of violating the Alaska Game Laws and Humphries through his attorneys appeared in Commissioner's Court and pleaded guilty to the fact.

Humphries never supplied this bond for \$3,000 which was supposed to be paid. He never paid Joe the percentage of his receipts; never paid him a cent of this 6 per cent percentage that Joe was supposed to get for giving the restaurant concession to Humphries and Campbell.

None of those things was ever done. So we prepared and had served on Humphries a notice detailing the four things that Humphries had failed to do—provide the bond to pay his bills, to comply

with the laws, and to keep a sanitary restaurant in operation there, and for those reasons we as—we stated that the deal between him and between Blackard was terminated 24 [15] hours after he received the notice and we had the Marshal serve the notice.

24 hours expired. Joe had a new operator ready to go in and take over the restaurant. Humphries refused to get out. Joe didn't institute any violent action. He came to see us and we told him to be calm about it that Humphries probably as a practical matter would get out when he was able to get his things in order. And, before Humphries went out finally—the notice was served on April 15th of 1948 and along in May we were still having hearings on this case on the same matter before Humphries finally gave up and got out of the premises.

The complaint in this action asked for an injunction restraining Blackard from interfering with Humphries' occupancy of the premises. We asked for a temporary injunction and that was heard by the Court last May and you will have the file before you in the matter.

At any rate, finally Humphries got out. Then the new owners, as we shall say—the new operator of the restaurant for Joe—had quite considerable expense to go to before he could meet the health standard of the City in the restaurant setup.

Before Joe got through that tight lease that Joe and Starns nominally were on—that tight lease also

provided that they couldn't have any liens incurred on the premises—before Joe was through he had to pay Bliss Construction Company or [16] assign a note to them and he has paid a note to them for \$3,000-odd dollars on a bill that Humphries had run up on restaurant construction with Bliss and had never paid any part of, so that Joe wouldn't violate his own lease and so that Bliss wouldn't file a lien on the premises as he would have to do for his own protection.

Joe had to take over that obligation of Humphries and pay it off and he is still paying on the darn thing.

There are provisions in the lease like that. And, finally, after considerable legal manipulations here in May, why, Humphries and Campbell got out. Now this lawsuit was brought against Starns and Phillips and Blackard. Starns had nothing at all to do with it. Phillips during that period of time was operating the bar, working as a bartender for Joe. And Blackard had the agreement with Humphries.

Blackard, I anticipate that we can prove to you by your satisfaction, never raised a hand to Humphries. He never did anything that wasn't legal all the way through. He never did any subterranean thing like refusing to pay the light bill or anything like that.

The agreement between him and Humphries had these words in it "That Humphries would operate the restaurant and he would operate it in a sanitary

fashion" and so on and that "Blackard would purchase the heat, light and water," not the heat for the stoves for cooking, not the special lighting that Humphries [17] might want installed, not that sort of thing, but the normal heat of the building. In other words Blackard would furnish heat to the building and Humphries' customers wouldn't be cold and Humphries wouldn't have to set up a little individual heater near the stools or anything like that. He would heat the building normally. He would furnish heat, light and water. He would furnish light. He would furnish the same light that he furnished over the bar or over the eating tables or anything else and he did, but not that he would furnish electricity for electric stoves or oil for fuel for cooking stoves, that sort of heat. There is nothing in the agreement about that and you will have the agreement before you.

When Humphries came in with a \$500 bill for electricity for his cooking stoves, naturally, Joe refused to pay it.

Joe never got any payments of any kind out of Humphries during his occupancy of that kitchen. As Mr. McCutcheon outlined he was supposed to pay Joe a minimum of \$200 a month for that concession or six per cent of his gross receipts, whichever it is, and I don't believe that they will be able to show that a penny was ever paid Joe.

He was more than patient with them and he did put them out finally by the most exact and careful legal methods a month or more after he could have



terminated it on his agreement, took from April 15th to well along in May before those boys were finally out of there. He was nice. He did everything [18] that he could to square that thing away. And I ask that when you hear the evidence that you put yourselves in Joe's position. He had mortgaged his future—\$10,000 to Starns and roughly \$10,000 of his savings plus two more thousand dollars borrowed for the assignment of that lease; in addition to that he had remodeled the premises. And he puts a man in the kitchen whose operation of the restaurant is so sloppy, so dirty, so insanitary and whose running up of bills is so exorbitant, grocery bills, electricity bills, every kind of bill you can think of, whose whole operation was such a menace to the whole thing it was hurting Joe's bar business, it was jeopardizing all this money he was in debt for and all his life savings he had put in there, what would you do in that case? You would do your darndest to get these people out of there. You would comply with the law. You would take every step necessary.

You have an agreement. If you aren't satisfied—if Humphries is defaulting, if he is not running a clean restaurant, if he is not complying with the City grading standards for restaurants, if he is doing anything illegal, if he is not paying his bills, anything like that—you can terminate the agreement on 24 hours' notice.

And you are so careful about it that you have the Marshal serve the notice, and I am certainly glad



we did. And then after that Humphries refuses to get out and instead starts a lawsuit against Joe and gets a temporary injunction that was in effect—for a while Blackard was restrained from closing [19] up the premises. He had to keep a watch man there so that Humphries was able to operate 24 hours a day, long after this 15th notice but because there was a temporary restraining order in effect.

Then there were hearings and the temporary restraining order when more facts had been brought to the attention of the Court was lifted then after that time and for the first time Humphries got out of the premises and during all of that period Joe was losing customers, there was good will being dissipated for the restaurant and illwill was being engendered and it took a long, long time after that, as we shall show you, before that restaurant operation was profitable again.

Thank you.

The Court: The trial will be continued until tomorrow morning at 10 o'clock.

Ladies and Gentlemen of the Jury, each time you separate I am obliged by law to give you the admonition that you must not talk about this case among yourselves or with others and you must not listen to any conversation about it from any source and you must not form or express an opinion about it until it is finally submitted to you.

Now, to that I add another admonition which has no force of law but I think you ought to obey

and that is avoid reading the comments of the newspapers and listening to the reports over the radio broadcast about the case. You will be the better [20] able to decide the case upon the evidence you hear in Court if you don't listen to any extraneous matter about it.

Theoretically the newspapers and the broadcasters shouldn't express any opinion about cases before Courts but, as a matter of fact, they sometimes do. Now, they don't want to violate the law but they want to make their talks interesting or their newspaper reports interesting and so they spice up the news with a bit of opinion and it is better for jurors not to listen to that opinion or listen to the news at all.

So you might just as well avoid reading the newspaper articles about the case because you are going to decide the case upon the evidence, not on something printed in the newspapers. And if you don't read the newspapers or listen to broadcasts you won't hear any comment, any expression of opinion, about the merits of the case which you may conceivably hear or read if you read the newspapers or listen to the broadcast.

Court now stands adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 5 o'clock p.m., Tuesday, June 21, 1949, the trial was recessed until 10 o'clock a.m. the following morning.) [21]

Wednesday, June 26, 1949

The Court: Clerk may call the roll of the jury.

(Jurors' names were called by the Clerk and responded to.)

The Clerk: They are all present, Your Honor.

The Court: Plaintiffs may call a witness.

Mr. McCutcheon: Your Honor, it is necessary for us to call a witness out of turn. We would like to call at this time Mr. Hoff, Deputy United States Marshal, inasmuch as he has to leave at noon for the States.

HERBERT HOFF

a witness, being of lawful age, and being first duly sworn in the above cause, testified on his oath as follows:

Direct Examination

By Mr. McCutcheon:

Q. Mr. Hoff, will you state your name, please?

A. Herbert Hoff, Deputy United States Marshal.

Q. Mr. Hoff, were you Deputy United States Marshal during the months of April and May, 1948?

A. I was.

Q. Calling your attention to the latter part of May in 1948 did you have occasion to visit the Panhandle premises here in Anchorage?

A. I did.

Q. And at whose request did you visit the premises? A. Mr. Humphries. [24]

Q. When did—What did you find when you arrived there?

(Testimony of Herbert Hoff.)

A. I found a truck in the back of the place with a bunch of meat on it and I believe it was about a half case of canned milk. And Mr. Humphries told me they were moving the stuff out and I asked him what the reason was and they said the City Physician had condemned it.

Q. Was there anything else on the truck besides the meat and the milk?

A. Well, I don't remember now. It has been quite sometime ago, but I do know that there was meat and I remember that half case of milk.

Q. What did you do?

A. I told them if they had any more in there to put it back in, that they didn't have any authorization to move that stuff.

Q. You had reference to the canned goods, did you?

A. Yes.

Q. Was the restaurant in operation at that time or had it been closed down?

A. It had been closed down.

Mr. McCutcheon: Your witness.

### Cross-Examination

By Mr. Cottis:

Q. When was this, Mr. Hoff?

A. It was about the latter part of May of 1948, about that, I don't remember exact. [25]

Q. And I didn't quite catch the advice that you gave Mr. Humphries?

A. Not Mr. Humphries, I told Mr. Blackard.

(Testimony of Herbert Hoff.)

Q. And Glen Phillips?

A. Yes, that they didn't have no right to move any of that stuff without first consulting Mr. Humphries.

Q. Who was it that was present at that conversation—Blackard and Phillips and yourself?

A. And Mr. Humphries.

Q. Was Mr. Starns present?

A. Not that I remember.

Mr. Cottis: If the Court please, I am going to make the witness my own because of his imminent departure.

The Court: Very well.

Mr Cottis: May I have this marked for identification.

The Court: It may be marked Defendant's Exhibit "A" for identification.

### Direct Examination

By Mr. Cottis:

Q. Mr. Hoff, I am going to show you what purports to be a notice dated April 15th and which has been marked Defendant's Exhibit "A" for identification and which contains on the reverse side a statement dated March 10th bearing what purports to be your signature. I ask you whether that is your signature? A. Yes, this is my signature. [26]

Q. Will you read the notice on this side, Mr. Hoff, and tell me whether you recall serving that?

A. Vernon Humphries, Kenneth Havins and Alaska Food Service—

(Testimony of Herbert Hoff.)

Q. Just a moment, you may just read it to yourself.

The Court: Inaudibly.

Q. (By Mr. Cottis): Do you recall serving this?

A. Yes.

Mr. Cottis: May I offer this in evidence, Your Honor?

Mr. McCutcheon: I will hand you a piece of paper and ask you if that is the original of this?

The Witness: Yes, it is.

Mr. McCutcheon: Well, if the Court please, I have no objection to the introduction of both exhibits as I have intended to introduce them myself.

The Court: Counsel for defendants is offering one only now?

Mr. Cottis: I am perfectly willing to offer both of them. I didn't know the other one was in Court.

Mr. McCutcheon: I think it best to introduce the original.

Mr. Cottis: Both should be introduced, I think, because the copy has Mr. Hoff's service of return.

The Court: They may both be introduced. I understand they are identical but I understand the copy shows the return of the witness. Do counsel wish them to go in as two exhibits? [27]

Mr. Cottis: It is immaterial.

Mr. McCutcheon: I think they can go in as one.

The Court: I think they can go in as one because they are so intimately related.



(Testimony of Herbert Hoff.)

Q. (By Mr. Cottis): What was in this pickup truck when you arrived?

A. As far as I can remember there was some meat. I don't remember what it was, whether it was pork or beef, but I know it was meat. But I thought, and I am pretty sure, a half case of milk. I remember Mr. Humphries pointed it out to me.

Q. That is, it was an opened case of milk?

A. An opened case.

Q. Of canned milk, is that right?

A. Yes, sir.

Q. Was Doctor Moon there at that time?

A. No, he wasn't not while I was there. If he was I didn't see him.

Q. Had the case of milk been damaged in any way?      A. No, not that I know of.

Q. Did you look inside the case?

A. It was lying opened when I looked at it on the truck. That is what I seen on the truck.

Q. As near as you can recall what time of day was all this?

A. It was after hours because he came down to my home. I would say, if I am not mistaken, it was between 7 and 8 o'clock. [28]

Q. In the evening?      A. Yes.

Q. How long have you known Mr. Humphries?

A. Well, let's see, since about the time all this trouble came up.

Q. When you arrived there these items were in the back of the truck, is that correct?

(Testimony of Herbert Hoff.)

A. Yes, sir.

Q. And standing near the truck were Blackard, Phillips and Humphries?

A. No, when I looked at the truck it was just Mr. Humphries and I and then we went in the building and they said Doctor Moon had condemned——

Q. Who said that—Blackard and Phillips?

A. Yes.

Q. And the restaurant was closed at that time?

A. Yes, it was.

Q. Do you happen to know how long the restaurant had been closed then?

A. I don't remember.

Q. When was it that Humphries called your attention to this half case of milk?

A. Well, he showed me the meat.

Q. Was that before you went in and had a talk with Blackard and Phillips or afterwards?

A. It was before. [29]

Q. Was there anything else in the truck that you remember?

A. Well, it has been so long that I don't remember everything.

Q. But you are certain that there was a half case of milk there?

A. That thing seemed to stick out more because Mr. Humphries pointed it out to me.

Q. Do you recall the brand or anything like that? A. No.

(Testimony of Herbert Hoff.)

Q. Was there any conversation regarding the milk when you and Humphries were later with Blackard and Phillips?      A. I can't remember.

Q. You don't remember whether there was any conversation about it?      A. No, sir.

Q. There was conversation about the meat, however, is that correct?

A. About the meat, yes. I asked Mr. Blackard if he had put the meat in there and he said Doctor Moon had condemned it.

Q. But as nearly as you can recall this half case of milk wasn't mentioned at all.

A. Well, I don't remember, no.

Q. Can you recall any further conversation at that time?

A. No, sir, it has been quite a time ago now.

Q. And you don't remember Mr. Humphries mentioning that half [30] case of milk to Blackard and Phillips?      A. No, sir.

Q. In other words what I am getting at, Mr. Hoff, it seems strange, doesn't it, that Doctor Moon would have condemned a half case of unopened milk? I should think that you would have made some remark about it.

Mr. McCutcheon: Object that the question is argumentative.

The Court: Overruled.

Q. (By Mr. Cottis): Explain why no remarks were made about it to Blackard and Phillips?

A. By whom, you mean——

(Testimony of Herbert Hoff.)

Q. By you?

A. Well, I didn't know too much about the case except that he asked me to come down and see what they were doing and I told him that something like that would be civil action so far as I knew, so I went down there and I didn't know if the thing was closed, that they had no rights to take anything out but, as he said Doctor Moon had condemned it—condemned everything that was on the truck.

Q. But no mention was made of that milk to Blackard and Phillips, as nearly as you can remember?

A. I can't remember of it.

Q. Now, you advised Blackard and Phillips that they had [31] better return that stuff to the premises?

A. Yes, I did.

Q. Do you know whether they did it?

A. No, sir.

Q. You don't know or they did not do it?

A. I don't know whether they did or not. You see, I left.

Q. How long were you there altogether, Mr. Hoff?

A. Oh, I would say approximately 15 or 20 minutes.

Q. Were there customers in the Panhandle Bar at the time you were in there?

A. I believe there were some people sitting around there, I don't know whether customers or not.

Q. Do you recall anybody who was present be-

(Testimony of Herbert Hoff.)

sides Blackard and Phillips and Humphries?

A. No, sir.

Q. Was Marvin Campbell present?

A. Yes, he was.

Q. He was? A. I think he was, yes, sir.

Q. Mr. Starns was not present you say?

A. I didn't see him.

Mr. Cottis: No further questions.

The Court: Any further direct examination.

### Redirect Examination

(Continued)

By Mr. McCutcheon: [32]

Q. Did you have any conversation with Mr. Blackard or Mr. Humphries about the locks on the store room? A. I believe I did.

Q. Who did you have the discussion with?

A. On the locks you mean?

Q. Yes.

A. With Mr. Humphries—I mean Mr. Blackard.

Q. And what was the nature of that discussion, Mr. Hoff?

A. I asked him who gave him permission to take the locks off?

Q. What did he say to that?

A. He didn't say nothing.

Q. Now with reference to the meat and milk that you testified to, now was there anything else on the truck that you recall?

(Testimony of Herbert Hoff.)

A. Not on the truck that I recall.

Q. Was there anything else there that Doctor Moon was supposed to have condemned?

A. I don't remember, it has been a long time ago now.

Mr. McCutcheon: Very well.

Mr. Cottis: No further question.

Mr. McCutcheon: No further questions.

The Court: That is all. Another witness may be called.

Mr. McCutcheon: Mr. Humphries.

### VERN HUMPHRIES

a witness, being of lawful age, and being first duly sworn in [33] the above cause, testified on his oath as follows:

#### Direct Examination

By Mr. McCutcheon:

Q. Will you state your name, Mr. Humphries?

A. Vern Humphries.

Q. Are you married? A. Yes.

Q. Have children? A. 3.

Q. What is your occupation? A. A cook.

Q. How long have you been engaged as a cook?

A. About 24 years.

Q. Now were you in the restaurant business in the months of March, April, May, 1948?

A. Yes, sir.

Q. And where were you then engaged in the restaurant business on those dates?



(Testimony of Vern Humphries.)

A. In the Panhandle Bar and Cafe at 314 4th Avenue.

Q. And on what date did you become engaged in business there?      A. On February 4th—5th.

Q. Now, who was the purported owners of the premises at that time? Who did you think was the owner?

A. Mr. Starns and Mr. Blackard.

Q. Now, who is the owner? [34]

A. I later found out Mr. Campbell or Mrs. Campbell, rather, is.

Mr. Cottis: Your Honor, Mr. McCutcheon has asked me to stipulate as to a copy of an agreement. That agreement was drafted and redrafted several times and I wonder if we could have a short recess so that I can compare with the original which is in another one of the Court's files in the Clerk's office.

The Court: Court will stand in recess. How much time is desired?

Mr. Cottis: I would like to have ten minutes. That would be enough.

The Court: All right. Court will stand in recess until 10:23.

(Short recess.)

The Court: Without objection the record will show all members of the jury present.

Mr. McCutcheon: May I have a moment, Your Honor, I am checking through the file of the previous case. May I see the file that Your Honor has before you?

(Testimony of Vern Humphries.)

If the Court please, in Cause No. A-5001, a copy of an agreement is attached to an amended complaint sworn to by Joe Blackard wherein he certifies an exhibit attached to that entitled "Agreement" to be a true copy of the original. In various other pleadings the same copy appears—the identical copy—and I ask counsel at this time to stipulate that the [35] copy that his client has sworn to to be a true copy and the copy that we have used be introduced.

Mr. Cottis: May it please the Court, in Cause A-5030, which is an appeal from Commissioner's Court, this agreement was introduced in evidence in Commissioner's Court and was received and in the Court's file 5030 in what purports to be an executed copy of the agreement with signatures in ink and that original is a different agreement in several respects from the copy which Mr. McCutcheon is referring to. For that reason I certainly object to the introduction of anything except this original that is in the Court's file.

Mr. McCutcheon: May I be heard further, Your Honor? In the pleading entitled Amended Complaint wherein Joe Blackard swore under oath as follows "That a copy of said agreement is attached hereto marked Exhibit 'A' and made a part of this complaint," I ask counsel if he will stipulate that that agreement may be introduced—that copy?

Mr. Cottis: I will not, Your Honor.

The Court: Very well.

(Testimony of Vern Humphries.)

Q. (By Mr. McCutcheon): Mr. Humphries, in the spring of 1948 did you have occasion to enter into an agreement with Mr. Blackard or Mr. Starns?      A. Yes, sir.

Q. In connection with the restaurant premises located in the Panhandle premises? [36]

A. Yes.

Q. And can you tell me what is the nature of that agreement?

A. The nature of that agreement——

Mr. Cottis: I object, Your Honor, the agreement speaks for itself.

The Court: Objection is sustained.

Q. (By Mr. McCutcheon): Did you enter into an oral agreement at that time?      A. Yes, sir.

Q. Did you enter into a written agreement at that time?      A. Yes, sir.

Q. Will you please tell me what the oral agreement was that you entered into?

Mr. Cottis: I object, Your Honor, unless it is established that the oral agreement was subsequent to the written agreement.

The Court: It must be shown that the oral agreement was not incorporated into the written agreement. If there was a written agreement perhaps it could be modified by a subsequent oral agreement but the oral agreement if it was incorporated into a written agreement would not be admissible, and that is my judgment. I think counsel has relied upon a written agreement too and not upon an oral agreement.

(Testimony of Vern Humphries.)

Mr. McCutcheon: Very well.

Q. I hand you a piece of paper and ask you to tell me what it is, Mr. Humphries? [37]

A. It is an agreement.

Q. What is the date on it?

A. The date on it is February 4th, 1948.

Q. And who is it signed by?

A. It is signed by Kenneth Havins, Joe Blackard and Vernon Humphries.

The Court: Signed by——?

The Witness: Joe Blackard, Kenneth Havins and Vern Humphries.

The Court: Is Havins a party to this suit?

Mr. McCutcheon: Beg your pardon?

The Court: Kenneth Havins is not a party to this suit, is he?

Mr. McCutcheon: No, your Honor.

The Court: Counsel may proceed.

Q. (By Mr. McCutcheon): Now, is that the agreement you entered into at that time?

A. Yes, on the 4th.

Mr. McCutcheon: I offer it in evidence.

The Court: Is there objection?

Mr. Cottis: I would like to see the agreement, Your Honor, before I know whether to object.

The Court: I thought counsel had seen it.

Mr. Cottis: This is a different agreement from the one I asked about. May I inquire from Mr. Humphries? [38]

The Court: You may ask any questions that may

(Testimony of Vern Humphries.)

relate to the admissibility of the document but not engage in cross-examination.

Mr. Cottis: That is what I mean, Your Honor.

The Court: Yes.

Mr. Cottis: Mr. Humphries, this is the agreement that was signed by you and Mr. Blackard and Havins, is that correct?

The Witness: Yes, it is.

Mr. Cottis: Where was it signed?

The Witness: It was signed in Mr. McCutcheon's office.

Mr. Cottis: Did you see Mr. Blackard sign it?

The Witness: Yes, I did.

Mr. Cottis: Did you see Mr. Havins sign it?

The Witness: I believe that I did.

Mr. Cottis: Did you see Mr. McCutcheon sign it as a witness?

The Witness: Yes, I did.

Mr. Cottis: I have no objection to the agreement, Your Honor.

The Court: It may be admitted in evidence as Plaintiff's Exhibit No. 1 and may be read to the jury. What is the date of the agreement?

Mr. Cottis: February 4th.

Mr. McCutcheon: Will Your Honor permit me to take it from the file of the other case? [39]

The Court: Yes, it may be detached from the file and some paper should be placed in the file to indicate that it has been removed so that it may be returned to the file again. This is a file on another case, is it?

(Testimony of Vern Humphries.)

Mr. McCutcheon: Yes, sir. It is entitled "Agreement" and it says as follows:

PLAINTIFF'S EXHIBIT No. 1

"This agreement, made and executed in duplicate at Anchorage, Alaska, this 4th day of February, 1948, by and between Joe Blackard of Anchorage, Alaska, hereinafter referred to as 'Blackard,' and Vernon Humphries and Kenneth Havins known as the Alaska Food Service, hereinafter referred to as 'Humphries.'

"Witnesseth:

"That in consideration of the mutual promises hereinafter set forth, the parties hereto have agreed, and by these presents do agree as follows:

"Humphries agrees to conduct a clean sanitary restaurant in the premises known as the Panhandle Bar and Cafe, 314 Fourth Ave., Anchorage, Alaska.

"Blackard agrees to furnish the space, light, heat and water necessary for such operation and to provide the utensils and equipment now on the premises. Humphries represents that he has examined the foregoing and is satisfied therewith.

"Humphries shall operate the foregoing restaurant as an independent contractor and will indemnify Blackard from any liability for debts and obligations incurred by Humphries. To [40] implement this agreement, Humphries shall provide bond in the sum of \$3000.00 for the purpose of protecting



(Testimony of Vern Humphries.)

Blackard from any claims made against Blackard, and arising out of acts or omissions to act on the part of Humphries.

“Humphries shall pay to Blackard on or before the 10th day of each month a sum equal to 6% of gross receipts derived from all operations conducted by Humphries upon the premises or the sum of \$200.00 whichever is the greater.

“Humphries shall keep accurate books of account, showing all receipts from said operations whatsoever nature including airlines business; Humphries agrees to clear all sales through cash register tapes. All books and tapes shall be open to inspection by Blackard, at reasonable times.

“Humphries agrees to comply with all laws and in event a grading system is adopted for restaurants by the City of Anchorage Humphries agrees to endeavor to obtain the highest possible grading thereunder.

“The parties understand that the present restaurant equipment is to be moved to a new location South of its present site. Humphries agrees to bear all expense of moving said equipment and all expenses incurred in furnishing and maintaining additional equipment and utensils as demand may from time to time require. At the termination of this agreement Humphries agrees to surrender the premises peacefully and forthwith and an equipment inventory of equal or better quality than present inventory. [41]

(Testimony of Vern Humphries.)

“In event Humphries defaults in the terms of this agreement Blackard may terminate this one year agreement upon 24 hours’ notice. Humphries may terminate this agreement upon 30 days’ notice. Upon termination Blackard agrees to reimburse Humphries for the cost of consumably supplies.

“Neither party may assign his interest hereunder with written consent of other party.

“Humphries shall furnish all labor and supplies necessary to provide service adequate for the demand encountered.

“Witness the hands and seals of the parties date first written.

“Vernon Humphries, Kenneth Havins, Joe Blackard.” It is witnessed by myself, S. A. McCutcheon.

Q. Now, whom did you negotiate with before signing that agreement, Mr. Humphries?

A. With Larry Starns and Joe Blackard.

Q. And how long a period of time did the negotiations last?

A. Over a period of four or five days.

Q. Where was the original draft of that agreement made?

A. At Mr. Cottis’ and Hellenthal’s office.

Q. Where was the final draft signed?

A. At Stan McCutcheon’s.

The Court: For my own information, does counsel for plaintiff believe that the Plaintiff’s Exhibit 1 is identical in text with the copy which is attached

(Testimony of Vern Humphries.)

to the amended complaint? [42] Has any comparison been made of them to see?

Mr. McCutcheon: Yes, Your Honor, the exhibit that Mr. Cottis has attached to his amended complaint.

The Court: No, that isn't the question. There is a copy of what purports to be an agreement between the parties also dated the 4th of February attached to the plaintiff's amended complaint in this action, has counsel compared to see whether that is a correct copy of the instrument which has recently been admitted in evidence and read to the jury and marked Plaintiff's Exhibit No. 1?

Mr. McCutcheon: Yes, sir.

The Court: It is a copy?

Mr. McCutcheon: It is not a copy, sir.

The Court: It is not a true copy?

Mr. McCutcheon: It is not a true copy of the complaint or the agreement attached to the Plaintiff's amended complaint in one action; Mr. Humphries and the defendant's amended complaint in another, they are identical copies as I understand, either Mr. Cottis or myself have the original of that agreement in our office. I propose to check my office and I trust that Mr. Cottis will do likewise when he returns. The only difference between the two agreements is one sentence which provides that, in the copy of the agreement attached to both our complaints, provides that the counter shall be moved 18 feet south of its present location, where

(Testimony of Vern Humphries.)

this agreement provides [43] it shall be moved south of its present location. That is the only difference between the two agreements.

Mr. Cottis: May it please the Court, there are other differences between the two agreements and I don't think they should be gone into at this time.

The Court: Jury is instructed to disregard all of this. I shouldn't have asked counsel in the presence of the jury about this matter, but I simply wanted to try to keep myself straight with the view of by and by preparing instructions. You may disregard all this colloquy between counsel and myself about the copies attached to the various complaints and rely entirely upon the evidence.

Mr. Cottis: May it please the Court further, Mr. McCutcheon just mentioned something about searching his office for the original. I entered no objection because I thought Mr. Humphries had testified that it was the original.

The Court: We had better be careful what is said before the jury by counsel because it is hard for a member of the jury to distinguish what is colloquy between the Court and counsel and what is evidence and the jury must depend upon evidence.

Mr. McCutcheon: I would like to make a motion at this time. I don't think it would be preferable to make it in the presence of the jury.

The Court: All right. The jury may retire until recalled.

Mr. McCutcheon: If the Court please, inasmuch

(Testimony of Vern Humphries.)

as Mr. [44] Blackard has sworn to a copy of an agreement which is in the possession of his counsel, I ask the Court for an order that he produce that copy this afternoon.

Mr. Cottis: I am sorry, Your Honor, I don't follow Mr. McCutcheon's argument. It is true in a complaint filed in a completely distinct cause of action there is attached a copy of a purported agreement. I believe there is nothing in that complaint which states that the original is in our possession.

The Court: Well, if counsel has the original he will present it this afternoon.

Mr. Cottis: Certainly, Your Honor, but I should like to be clear on the record that I made no objection to the copy that is now in evidence because I thought the testimony was clear that it is an original executed copy.

Mr. McCutcheon: Well, if the Court please, it is.

The Court: It is, no doubt about that, it has been signed by all of the parties. The only question now is whether the parties signed some other paper.

Mr. Cottis: May I make a further suggestion to the Court. I have just seen in Mr. McCutcheon's presence an original executed copy of another agreement between these parties of which the copy attached to the complaint is an exact copy. Now, he has the right here in the courtroom——

Mr. McCutcheon: No, Mr. Humphries has it and I propose to introduce it in about two minutes. [45]

Mr. Cottis: May it please the Court, if the



(Testimony of Vern Humphries.)

original executed copy of this second agreement that Mr. McCutcheon is talking about is here in the Courtroom why am I directed to produce it?

The Court: Well, there may be a third one, I don't know. If you have any, Mr. Cottis, it is your duty to produce it.

Mr. Cottis: Yes, Your Honor.

The Court: If you have any other original, whether it is a carbon or not, if it is actually signed by the parties it is your duty to produce it so that all the evidence may be before the Court.

Mr. McCutcheon: May I proceed, Your Honor?

The Court: Yes, you may proceed. Jury may be recalled.

Q. (By Mr. McCutcheon): Mr. Humphries, will you look at the second piece of paper before you?

A. Yes, sir.

Q. Whose signature appears at the bottom of that paper?

A. Joe Blackard, Kenneth Havins, Vernon Humphries, myself, and Stan McCutcheon.

Q. And what is that piece of paper?

A. It is the original.

The Court: Let me see?

Q. (By Mr. McCutcheon): Mr. Humphries, is that the final agreement or is that the [46] signed rough draft that was subsequently corrected and signed?

A. That is right, it is a rough draft.

Mr. Cottis: Object to the question as leading and ask that the answer be stricken.

The Court: Overruled.



(Testimony of Vern Humphries.)

Q. (By Mr. McCutcheon): Now, does this agreement before you, that you are now——

The Court: Well, now, I overruled—I denied a motion when counsel asked a leading question but counsel should avoid leading questions.

Mr. McCutcheon: I apologize to the Court if my questions have been leading. I have been just trying to get to the point.

Q. Is the paper that you have in your hand, is it typewritten?

A. Yes, it is, and other writing on it.

Q. Is there other writing on it?

A. Yes, sir.

Q. Is that the final agreement? A. Yes.

Mr. Cottis: Same objection, Your Honor.

The Court: Overruled.

Q. (By Mr. McCutcheon): Is that the final agreement? A. Yes, it is.

Q. Was an agreement identical with that subsequently signed? A. Yes, sir. [47]

Q. Now, is that the agreement Mr. Cottis is talking about? A. Yes, the first one here.

Mr. Cottis: I object, Your Honor, because Mr. Humphries cannot know what I am talking about.

Mr. McCutcheon: Well, if the Court please, if this is the agreement that he said he saw in my file and insisted on being produced and I am trying to get it in and now he is objecting to it.

The Court: The objection is sustained to the question. It is too indefinite to say “Is that the

(Testimony of Vern Humphries.)

agreement that counsel or Mr. Cottis was asking about?"

Mr. McCutcheon: Very well, sir.

Q. Now, is that agreement that you have before you together with the handwritten interlineations, does that constitute the final agreement?

A. Yes, sir.

Mr. McCutcheon: Offer it in evidence.

The Court: It may be shown to counsel.

Mr. Cottis: I object, Your Honor. Well, before objecting may I inquire of the witness about that agreement?

The Court: Yes. Has counsel seen this paper?

Mr. Cottis: Just from a distance.

The Court: Counsel may read it. Take enough time to read it and see what it contains.

Mr. Cottis: Thank you, Your Honor. And may I have plaintiff's [48] exhibit No. 1?

The Court: Yes. Just see if that is marked Plaintiff's Exhibit No. 1?

Mr. Cottis: Yes, Your Honor.

The Court: I had better repeat the rule—All persons who may be witnesses are required to remain outside the Court Room until called as witnesses.

Mr. Cottis: Mr. Humphries, in whose custody is this unmarked document or in whose custody has it been to this time—this document which Mr. McCutcheon has offered in evidence now?

The Witness: It has been in—I don't know for sure what file it was taken out of just then, I

(Testimony of Vern Humphries.)

couldn't swear to that, but I do know that it is the original what we agreed upon.

Mr. Cottis: Just answer my question.

The Court: Where has it been?

The Witness: It has been in the files here.

Mr. Cottis: In whose files?

The Witness: It has been in our file, I am sure.

Mr. Cottis: That is, in your own file?

The Witness: I don't have—in McCutcheon's file.

Mr. Cottis: In McCutcheon's file?

The Witness: Yes.

Mr. Cottis: Continuously since it was executed?

The Witness: To all my knowledge, yes.

Mr. Cottis: And is that the source from which it was [49] produced at this time?

(No response.)

Mr. Cottis: How did you acquire possession of it just now?

The Witness: Mr. McCutcheon handed it to me.

Mr. Cottis: I notice that there are several interlineations on this document, Your Honor, could I have it marked for identification so that I can refer to it.

The Court: Mark it for identification as Plaintiff's Exhibit 2.

Mr. Cottis: Mr. Humphries, I show you this document which is marked for identification as Plaintiff's Exhibit 2 and I invite your attention to the interlineation of the word "substitute" up here in pencil and ask you who wrote that word in?

(Testimony of Vern Humphries.)

The Witness: To be truthful with you, I could not tell you.

Mr. Cottis: Can you tell me when the word was written in?

The Witness: Yes, it evidently was wrote in the night that we entered in this first agreement and then I taken it over to compare it with Larry Starns' agreement and we arrived on these other minor little changes and came back over immediately for a new copy to be written.

Mr. Cottis: Then it was written, you testified, on the 4th day of February, 1948?

The Witness: Yes, sir. [50]

Mr. Cottis: How do you know, did you see it written in——

The Witness: Yes, sir, I did.

Mr. Cottis: And whom did you see write the word?

The Witness: I can't recall this word up here at the top of, when it came in there.

Mr. Cottis: But you do recall seeing somebody write the word in?

The Witness: This was kept in my possession for a few days afterwards or I picked it up. When Kenneth Havins was sent out my nephew was going to be a party of the contract, which didn't go through.

Mr. Cottis: Just stick to the question, Mr. Humphries, can you recall who wrote that word on the paper and when it was written?

(Testimony of Vern Humphries.)

The Witness: No, I can't.

Mr. Cottis: Can you recall who drew this line which goes from the word "substitute" down to over the word "Havins"?

The Witness: No, I cannot.

Mr. Cottis: Now, can you tell me who wrote in ink these words "Albert F. Humphries"?

The Witness: Yes, I can.

Mr. Cottis: All right, who wrote those?

The Witness: It was the attorney in——.

Mr. Cottis: Will you repeat your answer?

The Witness: We were going to take and make a new contract [51] and I didn't have in my possession down at the restaurant the original one that we had retyped. I had it down home. So I had this carrying it around in my pocket. I should have thrown it away. And I went up to Stan McCutcheon's office and asked for Albert Humphries—for a contract to be drawn with his name on it and a few minutes later called back and told them to cancel it out.

Mr. Cottis: Well, now, was it at the time that you asked them to draw the contract with Albert Humphries' name on it that those words were written there?

The Witness: What words?

Mr. Cottis: The words "Albert F. Humphries?"

The Witness: Yes, Albert F. Humphries was wrote. But this was almost a month after the contract was written.

(Testimony of Vern Humphries.)

Mr. Cottis: Who wrote the words?

The Witness: Who wrote the words "Albert F. Humphries"? Albert Humphries, I gave it to him and he took it over to Stan McCutcheon's office and left it with the attorney in Stan's place.

Mr. Cottis: And then Albert F. Humphries put those words on it?

The Witness: He wrote his name on there I am sure.

Mr. Cottis: That is, you did not see him write it?

The Witness: I did not write that word.

Mr. Cottis: You know his handwriting, do you?

The Witness: Not for sure.

Mr. Cottis: Is he a relative of yours?

The Witness: He is a nephew of mine.

Mr. Cottis: Now, Mr. Humphries, you state the reason these copy was sent over for those changes was that the original was at your house and you happened to have this in your pocket?

The Witness: Yes.

Mr. Cottis: Had this been signed at that time?

The Witness: Yes, this had been signed.

Mr. Cottis: Now, where is the original that you had at your house at this time?

The Witness: It was brought up and placed up to the lawyer's office.

Mr. Cottis: It was what?

The Witness: I brought my original paper at one time or this year.

Mr. Cottis: Excuse me, would you read his other answer back.



(Testimony of Vern Humphries.)

(Previous two questions and answers read.)

Mr. Cottis: Now, Mr. Humphries, you stated at the time this was sent over to Mr. McCutcheon's office to have changes made it had been signed by all the parties who were then parties to it, is that right?

The Witness: I don't quite—— [53]

Mr. Cottis: Well, at that time it had been signed by yourself, by Vern Humphries?

The Witness: Yes.

Mr. Cottis: And it had been signed by Kenneth Havins?

The Witness: Yes.

Mr. Cottis: And it had been signed by Joe Blackard?

The Witness: Yes.

Mr. Cottis: And it had been witnessed by Stan McCutcheon?

The Witness: Yes.

Mr. Cottis: Now, the reason you sent this over to McCutcheon's office was that the original was at your house at that time?

The Witness: Yes, if you are referring to this signature up at the top.

Mr. Cottis: I am referring to the original copy—I take it, by "original copy," first of all, you mean the original typewritten copy—the first copy off the typewriter?

The Witness: No, I mean there was three copies made and I had one of them.

(Testimony of Vern Humphries.)

Mr. Cottis: That was at your house?

The Witness: That was at my house, yes.

Mr. Cottis: That was a signed copy?

The Witness: I had with these words in here.

Mr. Cottis: With the signature on it?

The Witness: With the signature on it. [54]

Mr. Cottis: And then you also had this copy with this signature on it?

The Witness: Yes.

Mr. Cottis: Now, where was the third executed copy, do you know?

The Witness: Joe Blackard had one.

Mr. Cottis: And that takes care of the three of them, then?

The Witness: No, Kenneth Havins had one.

Mr. Cottis: Then, I see, there were four that were signed and not three?

The Witness: No, there was Kenneth Havins, Joe Blackard each one I know had a copy.

Mr. Cottis: But you had two executed copies, didn't you?

The Witness: This here was signed and later agreed upon with Mr. Larry Starns of the things that go——.

Mr. Cottis: Just answer the question, Mr. Humphries.

Mr. McCutcheon: He is answer the question you asked him; let him answer it.

Mr. Cottis: I asked him if he had two executed copies?

(Testimony of Vern Humphries.)

The Witness: This is what we wrote in to be the original one that we intended—ended up with.

Mr. Cottis: At the time you sent this over to McCutcheon's office to have the words Albert F. Humphries, you had in your possession or control two executed copies, did I understand you [55] correctly?

The Witness: That is right, this was supposed to have been thrown away. I just carried it in my pockets.

Mr. Cottis: This one was supposed to have been thrown away?

The Witness: Yes, because we had retyped these following words in here.

Mr. Cottis: Now, what happened to the other executed copy that you had in your possession and which at that time was at your home?

The Witness: Well, I can only—only one of two things could have happened to it.

Mr. Cottis: Do you know what happened to it?

The Court: Wait a minute.

The Witness: My house caught fire last year and I had lots of my papers in my house. It caught fire three times in one night. I could have had the same. I had one still in my safe there that this was off of and had them produce this to Stan McCutcheon or I had produced this or it had been left there and never been picked back up and it became the part. That is as near as I can answer it.

Mr. Cottis: In other words, your answer is that

(Testimony of Vern Humphries.)

other original that you had burned so far as you know?

The Witness: I can't even swear to that.

Mr. Cottis: Well, have you seen it since the fire?

The Witness: No, I seen one in one of the files when I was looking over the Court record the other day.

Mr. Cottis: That is in one of Mr. McCutcheon's files or one of the Court's files?

The Witness: In one of the Court's files.

Mr. Cottis: Now, back to these interlineations, Mr. Humphries. The next one that I see is an X and then the word "commence." Was that in there at the time you sent it over to Mr. McCutcheon's office to have Albert F. Humphries' name added?

The Witness: Yes, I guess it was.

Mr. Cottis: Who put that word "commence" on there?

Mr. McCutcheon: If the Court please, I don't like to interrupt counsel but that is the rough draft of the complaint that you have attached to your complaint.

Mr. Cottis: That action has nothing to do with this action, Your Honor. This has been offered as an exhibit and I would like to know how authentic it is.

The Court: All right, go ahead.

Mr. Cottis: Mr. McCutcheon, do you know who wrote the word "commence" in there?

Mr. McCutcheon: No.

(Testimony of Vern Humphries.)

Mr. Cottis: I am sorry, did I say "Mr. McCutcheon?" I am sorry. Mr. Humphries, do you know who wrote the word "commence" in there?

The Witness: Right off hand I couldn't tell you, no. [57]

Mr. Cottis: Was that word written at the time you sent the document over to Mr. McCutcheon's office?

The Witness: It could have been and it could'nt have been. I couldn't swear to that word. I don't know the handwriting. I can't answer.

Mr. Cottis: But at that time you are sure that that copy of the contract had been signed by all parties?

The Witness: Yes, sir.

Mr. Cottis: Now the other signed copy that you had in your safe at home that had been signed by all parties, too, as I understand it?

The Witness: Yes, sir.

Mr. Cottis: And did that have the word "commence" on it, too.

The Witness: I haven't seen it for a period of 15 months. That is kind of hard answer to answer.

The Court: May I see that? May I see Plaintiff Exhibit "A?" Counsel may proceed.

Mr. Cottis: I am sorry, I didn't hear the Court.

The Court: Counsel may proceed.

Mr. Cottis: Mr. Humphries, you don't recall whether that word was on the copy that was on your safe in your home?

(Testimony of Vern Humphries.)

The Witness: Pardon?

Mr. Cottis: You don't recall whether the word "commence" was on the copy in your safe at home, is that your answer? [58]

The Witness: As I have stated before, I couldn't remember it word for word over 15 months.

Mr. Cottis: But you are sure that there were only three signed copies to begin with?

The Witness: Well, I know positively that Joe Blackard had one and Kenneth Havins had one and I had one.

Mr. Cottis: Do you recall how many copies you signed?

The Witness: Not to be real honest about it, but I do know that we signed three of them.

Mr. Cottis: But to be real honest then there might have been six that were signed?

The Witness: No.

Mr. Cottis: Four?

The Witness: No, I believe—I am pretty positive that there was only the three that was signed.

Mr. Cottis: Then of the three that was signed you had two in your possession, is that right?

The Witness: Well, we first had made out this agreement was quickly written up and after we signed it we went back to the Panhandle, Joe Blackard, Kenneth Havins and myself, and met with Larry Starns and after talking we agreed on how many feet I was to go back in the back and we agreed on 18 feet and these words were writ in and



(Testimony of Vern Humphries.)

within 30 minutes we were back over there and this contract was retypewritten and we signed, I know, three copies with these very words into it. [59]

Mr. Cottis: That was on the night of February 4, 1948, is that correct?

The Witness: That is right.

Mr. Cottis: And, again, who was present?

The Witness: Joe Blackard, Kenneth Havins and Stanley McCutcheon. You mean at signing these?

Mr. Cottis: At the discussion in the Panhandle?

The Witness: That was Joe Blackard, Kenneth Havins and Larry Starns back in the back office room.

Mr. Cottis: And that was on the night of February 4, 1948, the same date that appears on that contract, is that correct?

The Witness: It is somewhere in there.

Mr. Cottis: You are sure, for example, that Joe Blackard was there?

The Witness: Yes.

Mr. Cottis: And you are sure that Larry Starns was in there?

The Witness: Yes, he was getting ready to leave town. He was in a big hurry.

Mr. Cottis: There is just no doubt in your mind, Mr. Humphries, that Mr. Starns was present on that night of February 4th?

The Witness: No doubt. That was no doubt.

Mr. Cottis: See if I follow this thing, then, you

(Testimony of Vern Humphries.)

and [60] Joe and Havins and McCutcheon in McCutcheon's office signed the document?

The Witness: We first had made one in your office?

Mr. Cottis: Which was never signed, is that correct?

The Witness: That is right.

Mr. Cottis: Now, first you made out a document in our office and that was never signed, then you and Havins and Blackard and McCutcheon were present at the original signing of what you now say was a draft of an agreement at McCutcheon's office, is that right?

The Witness: Yes.

Mr. Cottis: And that was during the day of February 4, 1949?

The Witness: It was in the evening.

Mr. Cottis: In the evening?

The Witness: Yes, sir. We left your office somewhere at closing time, I remember something like you were in a hurry to get out and I know I called Stanley from his home.

Mr. Cottis: Later at the evening you were at the Panhandle premises, is that your testimony?

The Witness: Yes, sir.

Mr. Cottis: And that time you sent this document which is marked for identification Plaintiff's Exhibit 2 over to McCutcheon's office to have the name "Albert F. Humphries" added?

The Witness: That was in a period of about, I

(Testimony of Vern Humphries.)

would say [61] 30 days had elapsed then when Kenneth Havins was selling out.

Mr. Cottis: Oh, then, that was not on the same day?

The Witness: About Humphries?

Mr. Cottis: Yes.

The Witness: No, it was about, I would, I would say, from two weeks to a month. I couldn't exactly recall the exact date, but I know I have the paper signed by Havins the day he sold out to me.

Mr. Cottis: Then the words "Albert F. Humphries" were added on there maybe a month later, you aren't—

The Witness: Up at the top I am sure it was a month later.

Mr. Cottis: Would the word "commence" have been written on about a month later, too?

The Witness: I can't just recall that, Mr. Cottis.

Mr. Cottis: Well, I am sorry to have interrupted the train of thought here. You all signed the document up in McCutcheon's office and then you went over to the Panhandle bar, is that right?

The Witness: Yes, sir.

Mr. Cottis: And then you had a further conference about the agreement?

The Witness: Yes, sir.

Mr. Cottis: And this was on the night of February 4, 1948? [62]

The Witness: Yes.

Mr. Cottis: And Larry Starns was present at that conference?

(Testimony of Vern Humphries.)

The Witness: Yes.

Mr. Cottis: Now, after that conference——

The Court: Counsel is standing between Mr. McCutcheon and the witness.

Mr. Cottis: I am sorry, Your Honor. After that conference, Mr. Humphries, you went back over to Mr. McCutcheon's office?

The Witness: I didn't follow you there?

Mr. Cottis: After the conference did you go back over to Mr. McCutcheon's office?

The Witness: Yes, we did.

Mr. Cottis: Who went over there?

The Witness: Joe Blackard, Kenneth Havins and myself.

Mr. Cottis: Leaving Starns at the Panhandle, is that right?

The Witness: That is right.

Mr. Cottis: What portion of the Panhandle was Starns in when you had this conference?

The Witness: He was on the restaurant side where they had a little office.

Mr. Cottis: Was his liquor store open then?

The Witness: No, they had just had bought out Tibbetts [63] or something.

Mr. Cottis: None of the property was open to the public at that time?

The Witness: The bar was just being closed up, something like that, getting ready to remodel.

Mr. Cottis: What occurred with reference to this agreement after you and Mr. Blackard and Mr.

(Testimony of Vern Humphries.)

Havins went back over to Mr. McCutcheon's office?

The Witness: We had it retyped.

Mr. Cottis: I see.

Mr. McCutcheon: I don't like to interrupt counsel, Your Honor, but I am wondering if he is still cross-examining for the purpose of testing admissibility of this exhibit?

Mr. Cottis: I am merely inquiring further about the exhibit. You had it retyped that evening of February 4?

The Witness: To my best of knowledge, yes, sir. I know we went back over there and I am sure we signed it that evening.

Mr. Cottis: And you are sure that it was retyped that evening?

The Witness: Why, certainly.

Mr. Cottis: Was there a stenographer in Mr. McCutcheon's office that night?

The Witness: No, sir, Mr. McCutcheon typed it himself.

Mr. Cottis: Mr. McCutcheon typed it himself?

The Witness: Yes, sir. [64]

Mr. Cottis: Do you remember how many copies he typed?

The Witness: I know that it was three. I know that each one of us had one. Whether he kept one——.

Mr. Cottis: That is, you had one, Havins had one, Blackard had one?

The Witness: That is right.

(Testimony of Vern Humphries.)

Mr. Cottis: None for Starns, of course?

The Witness: Not that I know of, it could have been.

Mr. Cottis: Well, were three of that new agreement signed, Mr. Humphries?

The Witness: All three of them?

Mr. Cottis: Yes.

The Witness: Yes.

Mr. Cottis: That is, the new agreement that Mr. McCutcheon typed up at that time was signed by all parties?

The Witness: Yes, Mr. Starns said whatever Joe said was o.k. with him.

Mr. Cottis: I see, but that new agreement that Mr. McCutcheon put in his typewriter that night was signed by you and Blackard and Havins, is that right?

The Witness: That is right.

Mr. Cottis: And that included the changes that are incorporated and penciled into this Plaintiff's Exhibit No. 2 for identification?

The Witness: I know the ink was wrote in. [65]

Mr. Cottis: The ink was typed in, is that right?

The Witness: That is right.

Mr. Cottis: And that was signed and then will you tell me what happened to that agreement?

The Witness: Well, I couldn't tell you what Mr. Blackard did with his or what Mr. Havins did with his. I told you a minute ago what to the best of my knowledge happened to mine.



(Testimony of Vern Humphries.)

Mr. Cottis: At that time you were talking about your copy of this Plaintiff's Exhibit 2 for identification, were you not?

The Witness: Will you speak that again, please, I don't quite get you?

Mr. Cottis: Read the question.

(Question read.)

The Witness: I still don't quite understand, I don't believe. I have two copies here and I might be confused as to which one you are referring to right now. I don't quite follow you, which one are you referring to?

Mr. Cottis: This one is in evidence, Mr. Humphries, so I don't think we care about that right now. I am referring to this which is marked on the back "Plaintiff's Exhibit No. 2 for Identification." I am referring to that.

The Witness: Yes, sir.

Mr. Cottis: Now, will you answer the question?

The Court: Better ask the question again.

Mr. Cottis: Mr. Humphries, sometime ago you stated—— [66]

The Court: You had better ask him if he so stated?

Mr. Cottis: Mr. Humphries, did you not state sometime ago that another executed copy of Plaintiff's Exhibit 2 was in your house and you think was destroyed by fire?

The Witness: Yes, sir.

(Testimony of Vern Humphries.)

The Court: Counsel was referring to that paper before any changes were made in it?

The Witness: No. No paper was in my house before it was changed. The paper that was in my house was the changes made in this contract.

Mr. Cottis: It had all those interlinations in?

The Witness: Yes, sir.

Mr. Cottis: Mr. Humphries, you stated that the contract was originally signed in the form of Plaintiff's Exhibit 1, this document here, at about 7:00 o'clock in the evening on February 4, did you not.

The Witness: Yes, sir.

Mr. Cottis: And then the three of you went over to the Panhandle Bar, is that right?

The Witness: That is right.

Mr. Cottis: And discussed the deal further with Mr. Starns?

The Witness: That is right.

Mr. Cottis: And then went back to Mr. McCutcheon's office where he retyped the contract to include these interlineations [67] which appear on Exhibit No. 2, is that right?

The Witness: Yes, sir, with all this in here.

Mr. Cottis: Yes. Now, how did the other copy of Exhibit No. 2 get down to your house in the interim?

The Witness: Well, I had a copy, Joe Blackard just like he has got it in his file there with the same thing that reads in here.

Mr. Cottis: Exhibit 1 was signed about 7:00

(Testimony of Vern Humphries.)

o'clock in the evening of February 4th, is that right?

The Witness: Pardon?

Mr. Cottis: You stated that Exhibit 1 was signed about 7:00 o'clock in the evening on February 4th?

The Witness: No, it was a little bit before that, I would say. We left your office about five o'clock and we went right over there.

Mr. Cottis: And changed the agreement at McCutcheon's office?

The Witness: Yes, I stated to you that I wouldn't sign that until I got my attorney's o.k.

Mr. Cottis: So it was signed, say, between six and seven o'clock on that night?

The Witness: Yes.

Mr. Cottis: Now, that first signing was in the form of Plaintiff's Exhibit No. 1, the one without the interlineations?

The Witness: That was the first signing, yes.

Mr. Cottis: Then you state that you proceeded to the Panhandle and conferred with Larry Starns?

The Witness: Yes, and also taking up the idea as we went over there how much space, that I was figuring on an air line coming in there and I said "How much space?" and "Draw me a plan of what this is going to be?" and they drew me a plan and we discussed it then and Larry said the best he would want would be 18 feet.

Mr. Cottis: So you were over there for a fairly long time during that discussion, were you?

(Testimony of Vern Humphries.)

The Witness: I would say half an hour, might have been 45 minutes, it wasn't too long.

Mr. Cottis: And then you proceeded right back to Mr. McCutcheon's office?

The Witness: That is right.

Mr. Cottis: Now, Mr. Humphries—

The Witness: I will take that statement back. I do believe that I called Stan again on the telephone. Now, I am not too positive but I do know I got him back down there to rewrite the paper again.

Mr. Cottis: And then after he had come back down you went over to his office?

The Witness: Yes, sir, he either waited there or I called him up, anyway we got in connections.

Mr. Cottis: How long a time interval do you recall [69] elapsed?

The Witness: Well, as I stated, I don't believe it was more—it could have been an hour, but I don't think so.

Mr. Cottis: Mr. Humphries, did I correctly understand you to testify earlier that the original—that another executed original of Plaintiff's Exhibit No. 2 was at that time in the safe at your house?

The Witness: At that time, no, sir.

Mr. Cottis: I see, then I am wrong.

The Witness: But you were talking about Albert Humphries, how his name came on there and I so stated the original one we type of this I had

(Testimony of Vern Humphries.)

was at my house, which was thirty days later and I carried this in my pocket and darn near wore it out.

Mr. Cottis: When were these interlineations which appear in ink above the fourth paragraph from the bottom, when were they made?

The Witness: They were made the same night, the words "approximately 18 feet."

Mr. Cottis: Who made those?

The Witness: Oh, I would not swear, it was one of us four.

Mr. Cottis: Was that when you were at the Panhandle or when you had returned to McCutcheon's office?

The Witness: No, it was done at the Panhandle.

Mr. Cottis: That was done at the Panhandle after the [70] document had been signed the first time and before you returned to McCutcheon's office?

The Court: I wish both of counsel would come to the bench with the reporter.

It is perfectly obvious to me what happened. The Witness is telling the truth about this thing and the document which is attached to Blackard's complaint, and which he sworn, was the final one and Blackard must know it and everybody must know it, and what is the use of——

Mr. Cottis: I think those are interlineations without Blackard's knowledge in this matter and I think that our girl——

(Testimony of Vern Humphries.)

The Court: How did Blackard then ever get a copy of that and put it in his own complaint?

Mr. Cottis: Because our stenographer would have copied it from the copies that were already in the Court's files over here, which are the erroneous copies.

The Court: I see. All right, what copy was in the Court's file at that time?

Mr. Cottis: It would have been the one in the eviction, which was the first.

The Court: Where is the file in the eviction action?

Mr. Cottis: It is 5030.

The Court: That is the one out of which we took—this is the one out of which we took Plaintiff's Exhibit 1, isn't it? [71]

Mr. Cottis: Yes.

The Court: That doesn't contain the interlineation.

Mr. Cottis: I know, that is what I am getting at.

The Court: How did—how could your stenographer copy a thing——

Mr. Cottis: It is our contention that this is our copy. I see what Your Honor means.

The Court: It is up to the jury to decide it, but, candidly, I don't believe a word of it. I think you had better dig up this original, wherever it is. Blackard must have it or somebody must have it. That is all, you may proceed with your examination.

Mr. Cottis: Mr. Humphries, you are sure that



(Testimony of Vern Humphries.)

Mr. McCutcheon himself retyped that agreement and typed in what is written in pen there?

The Witness: Yes, sir.

Mr. Cottis: And that retyped copy was then re-executed by all parties?

The Witness: Well, each one of us all had a copy of it, yes, sir.

Mr. Cottis: And everybody signed it, did they?

The Court: Do you know what "executed" means?

The Witness: Well, I would like to know what it means?

The Court: Don't you know what it means?

The Witness: I think I do. [72]

The Court: What does—

The Witness: It means that it was our agreement then—our signing.

The Court: All right, that is right.

Mr. Cottis: Everybody signed that new type-written copy of that agreement?

The Witness: Yes, sir.

Mr. Cottis: In your presence?

The Witness: Yes, sir.

Mr. Cottis: And that was at McCutcheon's office?

The Witness: Yes, sir.

Mr. Cottis: Mr. McCutcheon signed as witness?

The Witness: Yes, sir.

Mr. Cottis: Now, what happened to the agreements that had been signed between six and seven o'clock that night that are marked here Plaintiff's Exhibit No. 1?

(Testimony of Vern Humphries.)

The Witness: Mr. Blackard has one to my knowledge and Mr. Havins. I don't know what could have happened to them but I stuck this one in my pocket.

Mr. McCutcheon: May I interrupt counsel for a moment. I wonder if the Court would permit a short recess. We have run over our recess period and I am wondering if we couldn't have a brief recess.

Mr. Cottis: I think I will be just another minute, Your Honor, with the Court's indulgence. [73]

The Court: All right.

Mr. Cottis: Mr. Humphries, these interlineations were written at the Panhandle Cafe that evening while the four of you were conferring?

The Witness: Yes, sir.

Mr. Cottis: Were they written in all copies at that time?

The Witness: I don't think so—yes, come to think of it, they were.

Mr. Cottis: In all the copies so that they would all be identical?

The Witness: No, I know that—wait a minute, no, I don't believe so. I think we just taken the one back over there.

Mr. Cottis: So this was the only copy with the interlineation in it?

The Witness: That was wrote in before it got taken back for recopying.

Mr. Cottis: You are sure then that this is the

(Testimony of Vern Humphries.)

only copy that has the interlineations written in by hand?

The Witness: Now, that—that was 15 months ago, but to my knowledge that this was the only one that was wrote in.

Mr. Cottis: Where did you stand when you were writing them in at the Panhandle, do you recall?

The Witness: Larry Starns' desk.

Mr. Cottis: And they are written in on that copy in your handwriting? [74]

The Witness: No, it isn't my handwriting.

Mr. Cottis: Do you recall now who wrote those interlineations in?

The Witness: I wouldn't be positive of it.

Mr. Cottis: But one of the five of you or one of the four of you?

The Witness: One of the four must have writ it in there.

Mr. Cottis: Either you or Havins or Blackard or Starns?

The Witness: One of us wrote in it.

Mr. Cottis: Now you and Blackard and Havins all went back over to McCutcheon's office when he came down, is that right?

The Witness: Yes.

Mr. Cottis: So, did all the first copies that has been executed get returned to McCutcheon's office at that time?

The Witness: All the copies?

(Testimony of Vern Humphries.)

Mr. Cottis: Yes, of Plaintiff's Exhibit 1 that you had signed between six and seven?

The Witness: I couldn't swear what became of them, I don't remember, it was something that I never give a thought.

Mr. Cottis: Now, when this interlined Exhibit No. 2 was retyped by Mr. McCutcheon and was signed by all of you, who had original copies at that time?

The Witness: The original then—Blackard, Kenneth Havins and myself that I am positive of.

Mr. Cottis: And, possibly, there were more signed copies? [75]

The Witness: There may have been one more, I wouldn't say.

Mr. Cottis: But you are absolutely certain in your mind that that was retyped by Mr. McCutcheon?

The Witness: I am positive.

Mr. Cottis: And re-signed?

The Witness: And re-signed.

Mr. Cottis: Then, Your Honor, I object to this copy on the grounds that there is a later authentic copy and this is not the best evidence.

The Court: Of course it isn't the best evidence, but where is the authentic copy? Demand has been made on counsel to produce his copy and counsel has indicated that he knows nothing of it.

Mr. Cottis: That is correct, Your Honor.

The Court: Do you know where the last—where the one you signed last is?

(Testimony of Vern Humphries.)

The Witness: Mr. Blackard has got one.

The Court: Never mind, what about yours, what became of yours?

The Witness: I believe I had mine in the safe at home or in a little box when the house burned.

The Court: Well, what about the other one, where is Kenneth Havins'?

The Witness: He is out in the States. Mr. Blackard—— [76]

The Court: Mr. McCutcheon, have you searched your file?

Mr. McCutcheon: Yes, Your Honor, I certainly have and we don't have the final agreement.

The Court: At this time the exhibit will be admitted upon the ground that the original is missing and I shall also permit counsel for plaintiff to put in evidence the typed copy that is attached to the verified complaint by the defendant Joe Blackard in another action to show that Blackard himself at one time put forth the re-typed agreement, if there was a re-typed agreement, as the agreement upon which he relied. But that can be done later.

The Court will stand in recess for ten minutes until 11:50.

(Short recess.)

The Court: Without objection the record will show all members of the jury present, and the exhibit admitted may be read in whole or in part to the jury.

(Testimony of Vern Humphries.)

Mr. McCutcheon: Will counsel stipulate that it may be read later?

The Court: Upon stipulation of counsel it may be read later.

Mr. McCutcheon: Will counsel at this time stipulate to the admission of the copy of the agreement as attached to Mr. Blackards amended complaint?

Mr. Cottis: For what purpose?

Mr. McCutcheon: Will you stipulate as to its admission in evidence? [77]

Mr. Cottis: No.

Q. (By Mr. McCutcheon): Do you have the exhibits there? What is that piece of paper now before you?

A. That is a suit against Larry Starns—oh, Joe Blackard—and Marvin Campbell and Vernon Humphries, myself, defendants.

Q. What is the name of the paper? What is the title of it?

A. "In The District Court for the Territory of Alaska, Third Division. Joes Blackard, plaintiff, versus Marvin Campbell and Vernon Humphries, defendants."

Q. What is the title of the paper?

A. "Amended Complaint."

Q. Now, turn to—How many pieces of paper are there entitled "Amended Complaint?"

A. There would be four.

Q. Whose name appears at the bottom of page 3?

A. Ralph Cottis—Joe Blackard.



(Testimony of Vern Humphries.)

Q. Read page 4.

A. "United States of America,  
"Territory of Alaska—ss.

"Joe Blackard, being first duly sworn, upon his oath, deposes and says: I am the plaintiff in the foregoing Amended Complaint; know the contents thereof, and the matters and things therein set forth are true, as I verily believe.

"/s/ JOE BLACKARD

"Subscribed and sworn to before me this 6th day of January, 1949.

[Seal]      "/s/ ESTHER THOMPSON,  
"Notary Public for Alaska.

"My commission expires: 9-10-52." [78]

Q. Now, will you look at the last page of that complaint and tell me what it is?

A. Yes, it is the final agreement between Joe Blackard, Larry Starns and ourselves.

Q. It is a copy of the final agreement, did you say?      A. Yes, sir.

Mr. McCutcheon: We offer it in evidence.

The Court: Is there objection?

Mr. Cottis: Yes, Your Honor. May I inquire from the witness?

The Court: Yes.

Mr. Cottis: Mr. Humphries, what is the cause number of that action?

The Witness: Number A-5001.

(Testimony of Vern Humphries.)

Mr. Cottis: And do you see the stamp on it in purple by the Clerk's office?

The Witness: Yes.

Mr. Cottis: What is the date that appears on that stamp?

The Witness: January 11, 1949.

Mr. Cottis: Now, Mr. Humphries, I show you what purports to be an amended complaint in Cause No. A-5979, the matter which is now on trial before this Court, and ask you the date that appears on the Clerk's stamp here?

The Witness: May 7, 1948.

The Court: You had better confine yourself to the document [79] offered in evidence. If counsel has any objection he had better state it and state the grounds for it.

Mr. Cottis: I object to it. It hasn't been authenticated except being attached to a complaint. I have another complaint in this action with the same document attached to it, which complaint is verified by Mr. Humphries.

The Court: That is a matter of cross-examination and of argument to the jury. The objection is overruled and the complaint offered is admitted in evidence together with the exhibit attached thereto which purports to be a copy of an agreement. Complaint being verified by one of the defendants in this action, Mr. Blackard.

Mr. Cottis: Exception.

The Court: And the complaint or so much of it that refers to the agreement and the agreement

(Testimony of Vern Humphries.)

itself may be read to the jury or a copy of the agreement.

Mr. Cottis: I except, of course, Your Honor.

The Court: In this case, as in every case, exceptions are to be noted as of course to all adverse rulings of the Court, but that does not preclude counsel from taking oral exceptions at any time.

Does counsel wish to read this paper to the jury or any part of it?

Mr. McCutcheon: Yes, Your Honor, as soon as the Clerk gets through marking it. [80]

Q. Mr. Humphries, is page 4 of Plaintiff's Exhibit 3 the final draft of the agreement between you and Mr. Starns and Mr. Blackard?

A. Yes, it is.

Mr. McCutcheon:

“EXHIBIT A.

“Agreement

“This agreement, made and executed in duplicate at Anchorage, Alaska, this 4th day of February, 1948, by and between Joe Blackard of Anchorage, Alaska, hereinafter referred to as ‘Blackard,’ and Vernon Humphries and Kenneth Havins known as the Alaska Food Service, hereinafter referred to as ‘Humphries.’

“Witnesseth:

“That in consideration of the mutual promises hereinafter set forth, the parties hereto have agreed, and by these presents to agree as follows:

“Humphries agrees to conduct a clean sanitary restaurant in the premises known as the Panhandle

(Testimony of Vern Humphries.)

Bar and Cafe, 314 Fourth Ave., Anchorage, Alaska.

“Blackard agrees to furnish the space, light, heat and water necessary for such operation and to provide the utensils and equipment now on the premises. Humphries represents that he has examined the foregoing and is satisfied therewith.

“Humphries shall operate the foregoing restaurant as an independent contractor and will indemnify Blackard from any [81] liability for debts and obligations incurred by Humphries. To implement this agreement, Humphries shall provide bond in the sum of \$3,000.00 for the purpose of protecting Blackard from any claims made against Blackard, and arising out of acts or omissions to act on the part of Humphries.

“Humphries shall pay to Blackard on or before the 10th day of each month a sum equal to 6% of the gross receipts derived from all operations conducted by Humphries upon the premises or the sum of \$200.00, whichever is the greater.

“Humphries shall keep accurate books of account, showing all receipts from said operations of whatsoever nature including airlines business; Humphries agrees to clear all sales through cash register tapes. All books and tapes shall be open to inspection by Blackard, at reasonable times.

“Humphries agrees to comply with all laws and in event a grading system is adopted for restaurants by the City of Anchorage, Humphries agrees to endeavor to obtain the highest possible grading thereunder.

(Testimony of Vern Humphries.)

“The parties understand that the present restaurant equipment is to be moved to a new location approximately 18’ South of its present site. Humphries agrees to bear all expense of moving said equipment and all expenses incurred in furnishing and maintaining additional equipment and utensils as demand may from time to time require. At the termination of this agreement Humphries agrees to surrender the premises peacefully [82] and forthwith and an equipment inventory of equal or better quality than present inventory and allowed to move or sell additional equipment when agreement terminated.

“In event Humphries defaults in the terms of this agreement Blackard may terminate this one year agreement upon 24 hours notice. Humphries may terminate this agreement upon 30 days notice. Upon termination Blackard agrees to reimburse Humphries for the cost of consumable supplies.

“Neither party may assign his interest hereunder without the written consent of other party.

“Humphries shall furnish all labor and supplies necessary to provide service adequate for the demand encountered.

“Witness the hands and seals of the parties date first written.

“/s/ JOE BLACKARD

“/s/ VERNON HUMPHRIES

“/s/ KENNETH HAVINS

“Witness:

“/s/ S. McCUTCHEON.”

(Testimony of Vern Humphries.)

Mr. McCutcheon: This is Plaintiff's Exhibit 3.

The Court: I suggest that that part of the complaint which has reference to the exhibit should be first read.

Mr. McCutcheon: Paragraph I of page one of Plaintiff's Exhibit 3 is as follows:

"That on or about 4 February, 1948, he entered into an agreement with Vern Humphries and one Kenneth Havins under the [83] terms of——"

The Court: Who is the plaintiff?

Mr. McCutcheon: "In the District Court for the Territory of Alaska, Third Division, Joe Blackard, plaintiff versus Marvin Campbell and Vern Humphries, defendants, No. A-5001."

"——which the said Humphries and Havins, as a partnership, were obligated to pay to plaintiff a minimum sum of Two Hundred Dollars (\$200.00) per month thereafter in consideration of the plaintiff's granting them a concession to operate the kitchen in the premises known as 'The Panhandle Cafe,' at 314 Fourth Avenue, Anchorage, Alaska, a copy of said agreement is hereto attached, marked 'Exhibit A,' and made a part hereof."

### "Amended Complaint

"Comes Now the above-named plaintiff by his attorneys, Hellenthal, Hellenthal and Cottis, and for his causes of action herein alleges:

### "II.

"Upon information and belief, that the defendant



(Testimony of Vern Humphries.)

Marvin Campbell subsequently succeeded to the rights and liabilities of the said Kenneth Havins and has at all times herein mentioned operated in partnership with the said Vern Humphries in connection with the foregoing concession.

“III.

“That the said concession agreement was terminated for cause and pursuant to its terms by the plaintiff herein on 15 [84] April, 1948; that prior to such termination there had accrued to the plaintiff from the defendants the sum of \$400.00, no part of which has been paid, although demand therefor has been made by the plaintiff.

“For His Second Cause Of Action Herein, The Plaintiff Re-alleges Paragraphs I, II And III Above And Further Alleges:

“IV.

“That the defendants herein wrongfully and unlawfully refused to quit the premises after termination of the aforesaid agreement by the plaintiff; that by reason thereof, plaintiff's business was injured to the extent of \$12,000.00.

“For His Third Cause Of Action Herein, The Plaintiff Re-alleges Paragraphs I, II And III Above And Further Alleges:

“V.

“That prior to the termination of said agreement,

(Testimony of Vern Humphries.)

the defendants neglected and refused to comply with the terms thereof in that they failed to provide the bond required therein, and in that they failed to operate a sanitary and lawful restaurant in accordance therewith; and in that they failed to pay the debts incurred by them in such operation and to bear the expense of moving equipment and of furnishing additional equipment.

“VI.

“That by reason of the foregoing breaches of contract by the defendants, the plaintiff has been damaged in an additional sum of \$10,000.00. [85]

“For His Fourth Cause Of Action Herein, The Plaintiff Re-alleges Paragraphs I, II And III Above And Further Alleges:

“VII.

“That heretofore and prior to 3 March, 1948, at the special instance and request of the defendants, one Harold H. Bliss, doing business as The Bliss Construction Company, performed certain labor and furnished certain materials for the said defendants in connection with the transaction contemplated by said Exhibit A; that the reasonable and agreed worth of such labor and materials is Three Thousand and Five Dollars and 89/100 (\$3,005.89).

“VIII.

“That on 4 May, 1948, the said Harold H. Bliss for valuable consideration assigned his claim against

(Testimony of Vern Humphries.)

the defendants to the plaintiff herein; that the plaintiff is now the holder of said claim.

“IX.

“That no part of said sum has been paid, although demand therefor has been made; that by reason thereof there is now due and owing to the plaintiff from the defendants the sum of Three Thousand and Five Dollars and 89/100 (\$3,005.89) with interest from 3 March, 1948.

“For His Fifth Cause Of Action Herein, The Plaintiff Re-alleges Paragraphs I, II And III Above And Further Alleges: [86]

“X.

“That on or about 5 February, 1948, at the request of the defendants and in connection with the transaction contemplated in Exhibit “A,” plaintiff lent to the said defendants the sum of Four Hundred and Fifty Dollars (\$450.00); that the said loan was evidenced in writing; that under the terms thereof the full amount was to be repaid to the plaintiff on 15 February, 1948; that no part thereof has been paid, although due demand therefor has been made.

“XI.

“That by reason thereof, there is now due and owing to the plaintiff by the defendants the sum of Four Hundred Fifty Dollars (\$450.00), with interest from 5 February, 1948.

(Testimony of Vern Humphries.)

“XII.

“That Plaintiff has been compelled to employ attorneys to enforce his causes of actions against the defendants herein.

“Wherefore, plaintiff demands judgment against the defendants for:

“(a) \$3,855.89 with interest upon \$450.00 from 5 February, 1948; with interest upon \$3,005.89 from 3 March, 1948; with interest upon \$200.00 from 10 March, 1948, with interest upon \$200.00 from 10 April, 1948;

“(b) \$12,000.00 for injury to plaintiff’s business;

“(c) \$10,000.00 for damages for breaches of contract;

“(d) His costs and disbursements herein;

“(e) His reasonable attorneys’ fees herein;

“(f) Such other and further relief as the court may deem just and equitable.

“/s/ Ralph H. Cottis

“ Ralph H. Cottis,

“Of Hellenthal, Hellenthal & Cottis

“Attorneys for the Plaintiff.”

“Endorsed

“Filed in the District Court

“Territory of Alaska, Third Division

“January 11, 1949

“M. E. S. Brunelle, Clerk,

“By Virginia Olson, Deputy.”

The Court: Counsel may suspend. The trial will

(Testimony of Vern Humphries.)

be continued until two o'clock this afternoon and in the meantime you will observe your duty and that is not to talk about the case among yourselves or with others and not listen to any conversations or expression about it.

Court stands in recess until two o'clock this afternoon.

(Whereupon, at 12:05 p.m., Wednesday, June 22, 1949, the trial was recessed until 2:00 p.m. the same day.) [88]

#### Afternoon Session

The Court: Roll of the jury may be called.

(Names were called and responded to.)

The Clerk: They are all present, Your Honor.

The Court: Counsel may proceed with the reading of the exhibit.

Mr. McCutcheon: "Exhibit A.

#### "Agreement

"This agreement, made and executed in duplicate at Anchorage, Alaska, this 4th day of February, 1948, by and between Joe Blackard of Anchorage, Alaska, hereinafter referred to as 'Blackard,' and Vernon Humphries and Kenneth Havins known as the Alaska Food Service, hereinafter referred to as 'Humphries.'

"Witnesseth:

"That in consideration of the mutual promises

(Testimony of Vern Humphries.)

hereinafter set forth, the parties hereto have agreed, and by these presents to agree as follows:

“Humphries agrees to conduct a clean sanitary restaurant in the premises known as the Panhandle Bar and Cafe, 314 Fourth Ave., Anchorage, Alaska.

“Blackard agrees to furnish the space, light, heat and water necessary for such operation and to provide the utensils and equipment now on the premises. Humphries represents that he has examined the foregoing and is satisfied therewith.

“Humphries shall operate the foregoing restaurant as an [89] independent contractor and will indemnify Blackard from any Liability for debts and obligations incurred by Humphries. To implement this agreement, Humphries shall provide bond in the sum of \$3,000.00 for the purpose of protecting Blackard from any claims made against Blackard, and arising out of acts or omissions to act on the part of Humphries.

“Humphries shall pay to Blackard on or before the 10th day of each month a sum equal to 6% of the gross receipts derived from all operations conducted by Humphries upon the premises or the sum of \$200.00, whichever is the greater.

“Humphries shall keep accurate books of account, showing all receipts from said operations of whatsoever nature including airlines business; Humphries agrees to clear all sales through cash register tapes. All books and tapes shall be open to inspection by Blackard, at reasonable times.



(Testimony of Vern Humphries.)

“Humphries agrees to comply with all laws and in event a grading system is adopted for restaurants by the City of Anchorage, Humphries agrees to endeavor to obtain the highest possible grading thereunder.

“The parties understand that the present restaurant equipment is to be moved to a new location approximately 18' South of its present site. Humphries agrees to bear all expense of moving said equipment and all expenses incurred in furnishing and maintaining additional equipment and utensils as demand may from time to time require. At the termination of this agreement Humphries [90] agrees to surrender the premises peacefully and forthwith and an equipment inventory of equal or better quality than present inventory and allowed to move or sell additional equipment when agreement terminated.

“In event Humphries defaults in the terms of this agreement Blackard may terminate this one year agreement upon 24 hours notice. Humphries may terminate this agreement upon 30 days notice. Upon termination Blackard agrees to reimburse Humphries for the cost of consumable supplies.

“Neither party may assign his interest hereunder without the written consent of other party.

“Humphries shall furnish all labor and supplies necessary to provide service adequate for the demand encountered.

(Testimony of Vern Humphries.)

“Witness the hands and seals of the parties date first written.

“/s/ JOE BLACKARD

“/s/ VERNON HUMPHRIES

“/s/ KENNETH HAVINS”

and it is witnessed by myself.

Mr. Cottis: May it please the Court. The Court this morning directed me to search my files to see whether I had an original copy of Plaintiff's Exhibit No. 2 and if I did to produce it. I wish to inform the Court that I have searched my files and can find no such original copy nor any such copy except copies attached to various pleadings and I have no recollection [91] of having seen the original.

The Court: The Exhibit referred to would be now No. 3, or the copy of purported agreement attached to Plaintiff's Exhibit No. 3, which embraces the Amended Complaint and the Agreement having incorporated therein interlineations.

Mr. Cottis: It is my understanding, Your Honor, that Exhibits 2 and 3 are identical?

The Court: Yes, I assume so.

Mr. Cottis: Yes.

The Court: But at any rate counsel has not been able to find any original of any—any signed original of those papers?

Mr. Cottis: No, Your Honor. As nearly as my search disclosed, our office copied that agreement

(Testimony of Vern Humphries.)

from the copy attached in this action here in 4979, which is the action now before the Court. There is a copy of it attached to these plaintiffs' Amended Complaint in this action, and this action was filed some eight months prior to our 5001.

The Court: Is that the action now on trial?

Mr. Cottis: Now on trial.

The Court: That is a matter for argument.

Mr. Cottis: Yes, Your Honor.

The Court: Counsel may proceed.

Q. (By Mr. McCutcheon): Was there a restaurant in the premises known as the Panhandle prior to the time of this agreement? [92]

A. Yes.

Q. And did you purchase that business?

A. Yes, I did.

Q. And from whom did you purchase it?

A. From Clyde Graves.

Q. How much did you pay, if anything?

A. I paid \$2,500.00.

Q. I will hand you a piece of paper and ask you to tell what it is?

A. It is a bill of sale of the equipment in the restaurant of the Panhandle.

Q. Is there a date on the bill of sale?

A. Yes, there is.

Q. What is the date? A. The date is——

Q. Is there an acknowledgement on it?

A. The 5th day of February, 1948.

Q. Is the bill of sale signed? A. Yes, it is.

(Testimony of Vern Humphries.)

Q. By whom is it signed?

A. It is signed by C. L. Graves.

Q. And was C. L. Graves the owner of the restaurant? A. Yes, he was.

Q. Prior to your purchase? A. Yes. [93]

Q. And is that the bill of sale conveying the restaurant to you? A. Yes, it is.

Q. And does that set out the items conveyed to you? A. Yes.

Q. And on what page is that?

A. That is on the second page.

Mr. McCutcheon: I will offer it in evidence.

The Court: It may be shown to counsel for defendant.

Mr. Cottis: May I inquire from the witness, Your Honor? Did you see Mr. Graves sign this, Mr. Humphries?

The Witness: Did I see him? Yes, I did.

Mr. Cottis: Where was it that he signed it?

The Witness: In Stan McCutcheon's office.

Mr. Cottis: And that was on the date that appears in the document which was February 5, 1948?

The Witness: Yes, sir.

Mr. Cottis: Your Honor, I have no objection to the offering on grounds of authenticity. I object to it on the grounds of relevancy, the document doesn't show where these items were located. There is nothing connected with the matters at issue in this lawsuit.

The Court: Objection will be overruled at this time and it may be admitted marked Plaintiff's Exhibit 4. It may be read to the jury. [94]

(Testimony of Vern Humphries.)

Mr. McCutcheon: Will counsel stipulate that it may be read at a later time?

Mr. Cottis: Certainly.

The Court: Is it to be read now?

Mr. McCutcheon: It is to be read later, Your Honor.

The Court: Is that agreeable to counsel?

Mr. Cottis: That is agreeable, Your Honor.

Q. (By Mr. McCutcheon): Will you turn to page 2 of the bill of sale, Plaintiff's Exhibit 4, please?

A. Yes.

Q. Does that page contain a list of items that you purchased when you purchased the restaurant business? A. Yes.

Q. Will you read off the items on that page that you purchased when you purchased the restaurant business—slowly, please?

A. One large ice box; one meat cutter; one meat grinder; 16 counter stools; one counter; one menu board; miscellaneous dishes; miscellaneous cooking utensils.

Q. Does that constitute all of the items that you purchased by that bill of sale? A. Yes.

Q. Now, are there other items appearing on that page of Exhibit 4? A. Yes. [95]

Q. And will you read off those items, please?

A. One electric meat slicer; one electric steak cuber; one electric frigidaire.

Q. Yes.

A. One large electric french fryer; one electric meat saw. That is all.

(Testimony of Vern Humphries.)

Q. Now, were those items on there at the time the bill of sale was executed?

A. No, sir, they were not.

A. I went to the bank for a \$2,500.00 loan later on for purchase of equipment.

Q. Will you show the instrument to the Court there, please. Now, go ahead with your testimony.

The Court: I suppose it would be more in order to show it to the jury but that could be done later.

Q. (By Mr. McCutcheon): Now, do I understand you, Mr. Humphries, that there are five items appearing on page 2 of Exhibit 4 that were not there at the time the bill of sale was executed?

A. Right.

Q. Now, go ahead with your explanation as to how those five items got on page 2?

A. I went to the Bank of Alaska for a \$2,500.00 loan and I borrowed up on equipment—I purchased this equipment here in [96] addition to the other I had bought in this other bill of sale and I asked for the loan, which we typed them on here and used it for a bill of sale of all the equipment into the Bank of Alaska.

Q. Now, the first item that appears there is One Electric Meat Slicer, is that correct?

A. Yes, sir.

Q. Where did you purchase that meat slicer?

A. Seattle.

Q. How much did you pay for it?

A. I paid \$575.00.



(Testimony of Vern Humphries.)

Q. Now the next item is one electric steak cuber, is that correct?      A. That is correct.

Q. Where did you buy the steak cuber?

A. Seattle.

Q. How much did you pay for it?

A. \$318.00.

Q. And the next is one electric frigidaire?

A. Yes.

Q. Where did you purchase the frigidaire?

A. War Supply Store on Fifth Avenue.

Q. How much did you pay for it?

A. \$300.

Q. And the next is one large electric french fryer, is that correct? [97]      A. Yes.

Q. Where did you purchase the french fryer?

A. From the Alaska Railroad.

Q. How much did you pay for it?

A. \$165.00.

Q. And the fifth item is one electric meat saw, is that correct?      A. Yes.

Q. How much did you pay for that?

A. I paid \$585.00.

Q. Where did you purchase it?

A. From Northern Supply.

Q. Now, did you purchase any other items in connection with your business other than your consumable supplies inventory?      A. Yes, I did.

Q. Can you list those items?

A. Yes, I purchased one electric unit.

Q. What do you mean by "One Electric Unit"?

(Testimony of Vern Humphries.)

A. Well, it is an electric unit for an icebox.

Q. Where did you purchase it?

A. I purchased that from one of the electric shops here in town, I forgot just the name of it just right off hand.

Q. Do you mean by that a compressor unit?

A. Yes.

Q. How much did you pay for it, do you recall?

A. I paid \$600 for it.

Q. Now, did you purchase anything else?

A. Yes, dishes and silverware.

Q. Where did you purchase your dishes and silverware?

A. From Bailey Kobey here in town and Kennedy Hardware and Green and Winkler in Seattle.

Q. How much did you pay for the dishes and silverware?      A. Near \$500.

Q. Can you remember the exact amount?

A. Yes, it was \$500.

Mr. Cottis: Your Honor, I object to this line of questioning on the grounds that it is irrelevant to any matters stated in the complaint unless the purpose of it is to show the capital investment of Mr. Humphries in this business.

The Court: Well, I presume it will be connected up by—it is merely preliminary, as I understand, as I understand, at this moment it isn't relevant, but I assume that counsel isn't just putting it in trivially.

Mr. Cottis: Very well.

(Testimony of Vern Humphries.)

The Court: Objection at this time will be overruled and, of course, if it isn't connected up the Court will entertain a motion to strike and have the jury disregard it.

Q. (By Mr. McCutcheon): How did you wash your dishes at the restaurant?

A. By a dish washing machine. [99]

Q. Where did you get the dishwashing machine?

A. From Northern Supply Store.

Q. How much did you pay for the dishwasher?

A. I paid the sale price of it was \$255.00.

Q. Now, do you still owe for part of it?

A. Yes, I do.

Q. How much did you pay for it?

A. I paid, I believe, \$150.00.

Q. Now, did you have a sink? A. Yes.

Q. Was that a part of the original sale?

A. No.

Q. Where did you purchase the sink?

A. The sink was bought here in town.

Q. Do you remember where?

A. Yes, it was bought from Alaska Electric.

Q. Do you remember how much you paid for it?

A. Yes, \$143.00.

Q. Now, was there a stove in the restaurant when you purchased the restaurant?

A. Yes, it was.

Q. Was it in a good state of repair?

A. No, it wasn't.

Q. Did you repair it?

(Testimony of Vern Humphries.)

A. Yes, it had almost to be a new stove built out of it. [100]

Q. Who repaired it for you?

A. Lube Fisher for one and then General Electric or some electric shop here. I know the name if I can remember it.

Q. How much did you pay for the initial repair?

A. \$125.00.

Q. You made subsequent repairs to it, did you?

A. Yes.

Q. The initial repair was \$125.00 is that correct?

A. That is right.

Q. Now, did you make repairs to the chimney?

A. I built a new chimney.

Q. How much did you pay for that?

A. \$500.

Q. Who built the chimney?

A. Lube Fisher.

Q. Did you have any cupboards built?

A. Yes.

Q. Who built the cupboards?

A. Carpenter by the name of Sergeant.

Q. How much did you pay for that?

A. \$125.00.

Q. Did you have any mirrors in the restaurant?

A. Yes.

Q. Did they come with the original purchase?

A. No. [101]

Q. Did you purchase the mirrors?

A. Yes, I did.

(Testimony of Vern Humphries.)

Q. Where did you purchase the mirrors?

A. Up here at the N. C. Company.

Q. And how much did you pay for the mirrors?

A. The mirrors cost me \$70.00.

Q. Did you pay out anything in wages in moving the counter from the front of the restaurant to the rear or in repairs or alterations?

A. Yes, I paid some.

Q. And to whom did you pay that, if you recall?

A. Well, I paid up on the decoration of the place.

Q. How much did you pay?

A. I paid out around \$330 for labor upon the painting and paper hanging.

Q. How much did you pay out in painters wages?

A. I paid out \$208.37.

Q. Did you pay helpers wages?

A. Yes.

Q. How much did you pay in helpers wages?

A. Helpers wages was \$100.

Q. How did you advertise your business?

A. I advertised by radio and by the newspaper and by Neon sign in the front window.

Q. Did you purchase the Neon sign? [102]

A. Yes, I did.

Q. From where did you purchase it?

A. From Alaska Neon Company.

Q. And how much did you pay for it?

A. \$95.00.

Q. Now, Kenneth Havins was your partner at

(Testimony of Vern Humphries.)

the time you purchased this restaurant, is that correct?      A. That is correct.

Q. And did he remain your partner?

A. No, he didn't.

Q. Who, if anyone bought him out?

A. Richard Jones bought him out.

Q. And did Richard Jones then remain your partner?      A. No.

Q. Who bought Richard Jones out?

A. I did.

Q. What did you pay for his interest in the restaurant business?

A. I paid him \$750, somewhere along there, \$750 or \$760 somewhere.

Q. And did he owe you some money?

A. Richard Jones? Yes, he did.

Q. He owed you for half of the original purchase, is that correct?      A. That is correct.

Q. And was that obligation cancelled?

A. Yes, it were.

Q. I hand you a piece of paper and ask you to tell what it is, if you can?

A. Yes, that is a release from Kenneth Havins and Richard Jones.

Q. For what?

A. For their partnership into the Panhandle.

Q. What is the date?

A. The date is 26th of March, 1948.

Q. And is it signed?      A. Yes, it is.

Q. By who?



(Testimony of Vern Humphries.)

A. Richard Jones and Kenneth Havins and witnessed by Stanley McCutcheon.

Mr. McCutcheon: Offer it in evidence.

Mr. Cottis: May I inquire from the witness, Your Honor?

Mr. Humphries, did you see Mr. Jones and Mr. Havins sign that?

The Witness: Yes, I did.

Mr. Cottis: Where was it signed?

The Witness: We signed in Stanley McCutcheon's office.

Mr. Cottis: And he was present at the same time, was he?

The Witness: Yes, sir. He signed it.

Mr. Cottis: I have no objection to the authenticity, Your [104] Honor, I object to it on the grounds of irrelevancy, Your Honor.

The Court: Objection is overruled and it may be admitted and marked Plaintiff's Exhibit 5 and may be read to the jury.

Mr. McCutcheon: Does counsel stipulate that the reading may be waived at this time?

Mr. Cottis: Yes.

Q. (By Mr. McCutcheon): Now, did you purchase an inventory of foodstuff at the time you opened up your business?

A. No, you mean from Clyde Graves? No, I didn't.

Q. What happened to the inventory—his inventory, did he have an inventory?

(Testimony of Vern Humphries.)

A. Yes, he did.

Q. What did he do with it?

A. He sold it across the street to the Log Cabin or Log something.

Q. Did you purchase an inventory?

A. Yes, I did.

Q. How much of an inventory did you purchase?

A. Well, I had about \$1,500.00 inventory and I purchased in the neighborhood of \$2,000 more.

Q. You say you had a \$1,500.00 inventory, where did that inventory come from?

A. From the Alaskan Railroad.

Q. Were you in business with the Alaskan Railroad? [105]

A. I had a lease concession for food with the Alaskan Railroad.

Q. And when your contract expired is that how you came by this inventory? A. Yes, it is.

Q. And did you purchase an inventory in addition to the \$1,500? A. Yes, I did.

Q. And from whom did you purchase that inventory?

A. From Grocery Supply, Ship Creek Market and Merchandisers, and then there was a war surplus fellow that I bought some war surplus goods from, Frank someone, I can't recall it right now.

Q. Was it Frank—what was his name?

A. Frank Irish. Also I bought about a thousand dollars worth of airborne meat from Columbia Air Cargo.

(Testimony of Vern Humphries.)

Q. Now, how long had Blackard and Starns had the Panhandle premises when you entered into this agreement?

A. Well, right when they entered in I don't know, I understood they had bought it and I don't know just what day they bought it on.

Q. Did you find out later on?

A. Yes, I did.

Q. Do you know now how long they had the Panhandle? A. Yes.

Mr. Cottis: I object, Your Honor, on the grounds that it is obviously a conclusion of the witness. [106]

The Court: I don't see the relevancy of it, what difference would it make how long they had it at the time, they were in possession of it.

Mr. McCutcheon: Very well, I was just going on Mr. Cottis' remarks in his opening statement with reference to the same point and I thought I might clear up the matter. I will withdraw the question.

Q. Now, was the place closed when you entered into this agreement?

A. They were getting ready to close. They closed it two or three days after the agreement was signed.

Q. Why did they close it up?

A. For the remodeling.

Q. And was that the time when your counter was moved to the rear of the restaurant?

A. Yes.

Q. And was it later on moved to the rear of the restaurant? A. Yes.

(Testimony of Vern Humphries.)

Mr. Cottis: I object to the leading questions.

The Court: Counsel should not ask leading questions; objection is sustained.

Mr. McCutcheon: I did not think they were leading on material points, but if counsel wishes to hold me down, very well.

Q. Was the rest of the counter moved? [107]

A. Yes.

Q. Where was it moved to?

A. It was first moved 18 feet from the front end of the Panhandle.

Q. Where to?

A. It was moved straight back 18 feet and then later on it was moved back four and one-half feet more.

Q. And where did it then rest?

A. It rested in the back end of the Panhandle then.

Q. How far back?

A. 24 and one-half feet back, clear in back of the liquor store.

Q. How far back with reference to the rear of the Panhandle premises?

A. It was as far back as you dare to go on account of a side door. I had to lose two feet off my counter by going back that far.

Q. Was that according to the agreement?

A. No, sir.

Mr. Cottis: I object, Your Honor, the agreement speaks for itself.

(Testimony of Vern Humphries.)

The Court: Overruled.

Q. (By Mr. McCutcheon): Was that according to the agreement? A. No. [108]

Q. Did you have other agreements with Blackard and Starns after you entered into the written agreement, Exhibit 4?

A. Yes, there was one occurred over moving the bar.

Q. Was that an oral agreement or verbal agreement? A. That was verbal.

Q. Did you have an agreement with reference to the view from the street? A. Yes, sir.

Q. What was that agreement?

A. That the restaurant could be seen from the way the bar was to be built.

Mr. Cottis: Your Honor, just a moment, Mr. Humphries, I would like to know when the agreement was made and with whom? Mr. Humphries this morning referred to Exhibits 2 and 3 as the final agreements.

The Court: The time and place may be fixed.

Q. (By Mr. McCutcheon): Time and place, Mr. Humphries?

The Court: As nearly as you can remember?

Q. (By Mr. McCutcheon): Will you state the time and the place of the oral agreement that you are now testifying to?

A. Yes, it was when the liquor store was being put in in the front end of the Panhandle.

Q. Now, what was the agreement you had with

(Testimony of Vern Humphries.)

them with reference [109] to the view from the street.

Mr. Cottis: I don't believe that the time and place has been fixed, Your Honor.

The Court: What time was it and where was it? What time was it as nearly as you know and where was the conversation had?

The Witness: The conversation was had in the Panhandle and it was about two weeks after we had signed this agreement, I would say, somewhere in the near of February. I couldn't tell you the day, it was in the 20's and about nine o'clock in the morning.

Mr Cottis: And, Your Honor, I continue my objections unless he relates who was present.

Mr. McCutcheon: I will get to that if I get an opportunity.

Q. Now, who was present?

A. Larry Starns and Joe Blackard, Marvin Campbell and myself.

Q. Now, what was the agreement?

A. The Agreement were that Larry didn't have enough room for his liquor store and he said he was moving me four and one half feet further toward the back end. I objected it would run into more plumbing and run into a lot of meals and that I wouldn't get as much counter space as I was supposed to have.

Q. How much counter space was you supposed to have?



(Testimony of Vern Humphries.)

A. I was supposed to have 32 feet and an "L" eight feet [110] long.

Q. When did you enter into that agreement?

A. That was in the latter part of the 20's of February, 1948.

Q. Who was present when you made that agreement or is it the same one?

A. It is the same one.

Q. How much counter space were you to have?

A. I was to have all told 40 feet.

Q. And was it an "L" shape, did you say?

A. Yes.

Q. How much was the main counter to be?

A. The main counter was 32 feet long.

Q. How much was the "L" to be?

A. 8 feet.

Q. How many stools were you going to put on the "L"?      A. 4 stools.

Q. How many stools were to be on the main counter?      A. 17 stools.

Q. Go ahead with your testimony with reference to the agreement?

A. So by Larry Starns taking more than 18 feet he cut off my counter and I lost ten feet. I had to move all the equipment further back, change all the plumbing and I told them that "No Dice" that the work would stop and forbid them from moving the counter further back. [111]

Q. What did he then do?

A. I came over and saw Stan McCutcheon, my attorney.

(Testimony of Vern Humphries.)

Q. And then what happened?

A. He advised me to go back over and see if we couldn't take and reach agreement, which we did.

Q. Now, the original agreement called for posting a bond, did it not?      A. Yes, it did.

Q. And did it call for you paying the expenses of moving?      A. Yes, it did.

Q. Now, continue with your testimony on the present agreement, the oral agreement?

A. Well, I agreed that I would take and give up four and one-half more feet and lose my part of the counter providing that the bond was waived and Larry said he would take care of that and that he would stand the expense of moving further back, that he had to have the full 24 and one-half feet for the liquor store. So they had the carpenter to start again and the work proceeded. There was no more said about nothing.

Q. Now, did you say you had an agreement with reference to the view from the street?

A. Yes, I did.

Q. And was that agreement had at the same time?

A. Yes, but I lost it. They was supposed to take and run a sloping narrow at the back end of the liquor store was supposed [112] to be narrowed, supposed to run in kind of a "V" shape like and they built it out square which had the view from the street of the restaurant.

(Testimony of Vern Humphries.)

Mr. Cottis: Your Honor, I understand that all this is subject to my later motion to strike for reasons that it wasn't connected up in any way with the Complaint.

The Court: It may be so considered.

Mr. McCutcheon: Your Honor, we are on a different subject.

The Court: At any rate if counsel desires it that way it may be considered so.

Mr. Cottis: Yes, Your Honor.

The Court: Counsel can object anytime he feels so disposed.

Mr. Cottis: Very well, Your Honor, I object right now to this line of questioning on the grounds that it is not connected with anything at all in the Complaint, this later agreement—this moving of counters—and so forth, there is no notice of any such charge in the Complaint.

Mr. McCutcheon: I submit, Your Honor, that is completely material and I will await Your Honor's ruling.

The Court: Objection is overruled.

Mr. McCutcheon: Do I understand now, Your Honor, that counsel will have the privilege of moving to strike all of the testimony that has been heretofore given?

The Court: Counsel would have that right anyhow and I have [113] said that he has the right and he has it, but the Court could not deny counsel the right or privilege, as it is called. I think it is a

(Testimony of Vern Humphries.)

right to move to strike at any time if the evidence given is finally not relevant to the main issue. Then counsel has the right to make a motion to strike it and the Court is bound to consider it.

Mr. McCutcheon: Very well, sir, I was under the impression that an objection must first be entertained.

The Court: Well, usually Courts do not look with any great enthusiasms upon motions to strike when no objections are made but, nevertheless, the motion to strike may be made and the disposition of that motion is always within the sound discretion of the Court. I say "sound discretion" not arbitrary discretion. It is within the judicial discretion of the Court.

Mr. McCutcheon: Very well. Read the last answer.

(Answer read.)

The Court: Court will stand in recess for ten minutes.

(Short recess.)

The Court: Without objection the record will show all members of the jury present.

Mr. McCutcheon: Read the last question.

(Question read.)

Q. Now, was Mr. Starns present at that time?

A. Yes, he were.

Q. And did he enter into the agreement? [114]

A. Yes, he did.

(Testimony of Vern Humphries.)

Q. Did he have anything to say?

A. He had the floor then. He was doing the talking.

Q. And was Mr. Starns around there frequently?  
A. Yes, he were.

Q. And did he have anything to say about the remodeling?  
A. Yes.

Q. Was it necessary for you to frequently consult him?  
A. Yes, it were.

Q. Did you consult him when you entered into the original agreement?  
A. Yes.

Q. Was it necessary to get his approval?

A. Yes.

Q. Now, where was the restaurant counter with reference to the liquor store at the wind-up of the thing?

A. It was jammed right up against the liquor store.

Q. Could you see it from the street?

A. No, you couldn't.

Q. Was this damaging your business?

A. Yes, it were.

Mr. Cottis: Object to the leading question, Your Honor.

The Court: Just a moment, does counsel object?

Mr. Cottis: Yes, Your Honor.

The Court: On what—— [115]

Mr. Cottis: On the grounds it is a whole series of leading questions.

The Court: Yes, it is, the questions are unduly

(Testimony of Vern Humphries.)

leading. It is true that occasionally we get over some preliminary matter speedily where leading questions are permitted but we have here a whole series of leading questions and counsel should avoid them.

Mr. McCutcheon: I would like to go back over the last few, Your Honor. I asked him where the restaurant counter was located with reference to the liquor store.

The Court: That is not leading by any means.

Mr. McCutcheon: I asked him if the restaurant could be seen from the street.

The Court: You may put that in another fashion. State whether or not the restaurant could be seen from the street? The general tenor of counsel's questions recently has been unduly leading.

Mr. McCutcheon: I apologize for that, Your Honor, I was leading the witness on matters I didn't consider extremely material and in order to hasten the case along.

The Court: Quite right, I appreciate that that is frequently done but there is a limit to it.

Mr. McCutcheon: Yes. But the last four or five questions I don't believe were leading when counsel objected, sir.

Mr. Cottis: Your Honor, may I be heard?

The Court: Yes.

Mr. Cottis: In specific I object to the question which was substantially this: "Was it necessary to get Mr. Starns' consent to these agreements?" and I ask that the answer be stricken.



(Testimony of Vern Humphries.)

The Court: No, the question was asked and answered without any objection, counselor. The motion will be denied. It is true that it is a leading question. Counsel has the right to cross-examine upon that and every other subject.

Mr. Cottis: Yes, Your Honor.

The Court: Usually no little harm is done by leading questions except on some extremely vital point where a witness may be led to say things he otherwise would not say. Counsel may proceed and avoid leading questions.

Mr. McCutcheon: Yes, sir.

The Court: So far as possible.

Q. (By Mr. McCutcheon): Now, could the restaurant be seen from the street, Mr. Humphries?

A. No, it couldn't.

Q. Was this damaging to your business.

A. Yes.

Mr. Cottis: Objection, Your Honor, "was this damaging to your business?"

The Court: That is a leading question. [117]

Mr. Cottis: And I object.

The Court: Objection is sustained. "What was the effect on your business not having any view from the street?"

Q. (By Mr. McCutcheon): If any?

A. Yes, it hurt my business considerably because the public could not see that there was a restaurant in there.

Q. And how do you know that?

(Testimony of Vern Humphries.)

A. Because numbers of customers came in and said "Gee, I didn't know there was a restaurant in here."

Q. Now, how many stools did you wind up with?

A. 16.

The Court: Altogether?

The Witness: Altogether.

The Court: How many stools did you have in your original counter?

The Witness: 21 planned.

Q. (By Mr. McCutcheon): What was the value of your consumable inventory at the time you opened up the business?

A. My inventory was brought up to around \$4,000.

Q. How long were you in business?

A. I was in business two months and one-half from the 6th of March until the 21st of May.

Q. Did you maintain that inventory or was it larger or less [118] at the expiration of your business?

A. My inventory remained about the same.

Q. How frequently did you replenish it?

A. About every few days.

Q. From whom did you purchase most of your supplies?

A. From Grocery Supply Company, Piggly and Ship Creek Market.

The Court: You say you were in business between what period—the 6th of March——?

(Testimony of Vern Humphries.)

The Witness: To the 21st of May.

The Court: Counsel may proceed.

Q. (By Mr. McCutcheon): How did you pay for your inventory when you purchased it?

A. Mostly by check.

Q. Do you have any records of your business?

A. The only records that I have is the checks that hadn't been going out of the bank.

Q. Now, did you keep books of account?

A. Yes.

Q. And do you have those books of account now?

A. No, I don't have.

Q. And what happened to them, if you know?

A. Well, I believe that it was destroyed or something happened to them at the time of the fire in my home while I were about 6,000 miles away.

Q. When did your home burn? [119]

A. My home burned on the first day of October, 1948.

Q. Where was your home—here in Anchorage?

A. Yes, 538 "M" Street.

Q. Now, how long was your agreement with Blackard and Starns to run?

A. For one year.

Q. How much rent were you to pay?

A. I was either to pay \$200 a month or 6%, whichever was the greater.

Q. Now, what was to happen to the inventory of consumable supplies in the event of termination of your agreement?

(Testimony of Vern Humphries.)

A. Blackard was to reimburse me. Blackard was to reimburse me.

Q. And that was part of the written agreement?

A. Yes, it were.

Q. Did Blackard ever consider that he terminated your lease?      A. Yes.

Mr. Cottis: Object, Your Honor, Humphries doesn't know what Blackard considered.

Mr. McCutcheon: Well, I will rephrase the question, if counsel wishes.

The Court: Objection is sustained.

Q. (By Mr. McCutcheon): Did Blackard ever attempt to terminate your lease, Mr. Humphries?

A. Yes, he did by Deputy Marshal serving the paper.

Q. Referring to Defendant's Exhibit "A," is that the paper you received?      A. Yes, it is.

Q. And on what date did you receive that paper?

A. I believe that it was on the 15th day of April.

Q. It is dated April 15, 1948, addressed to:

"Vernon Humphries,

"Kenneth Havins and

"Alaska Food Service,

"Anchorage, Alaska.

"Dear Sirs:

"Please take notice that the agreement executed by us on 4 February, 1948, is hereby terminated, such termination to be effective twenty-four (24) hours from the hour of receipt of this notice by you.

"The defaults upon which this termination is based are:

(Testimony of Vern Humphries.)

“(1) You have failed to provide the bond required by the contract.

“(2) You have failed to pay me the amounts stipulated in the contract for your concession.

“(3) You have failed to comply with the law, in that you illegally had moose meat upon the premises.

“(4) You have failed to pay the expenses incurred by you.

“Sincerely,”

“By /s/ JOE BLACKARD.” [121]

The Court: What is the last one again, I didn't understand it,—4?

Mr. McCutcheon: 4. “You have failed to pay the expenses incurred by you.”

Q. Now, at the time that notice was served on you, Mr. Humphries, did Mr. Blackard offer to purchase your inventory? A. No, he didn't.

Q. What was the value of your inventory at the time the notice was served on you?

A. Around \$4,000.

Q. That is your consumable inventory?

A. Yes.

Q. Now, where were your supplies kept?

A. My supplies was—we had storeroom in the basement.

Q. And what was the value of the inventory in the storeroom in your basement?

A. It was around \$2,000, but I hadn't seen it for about a month before I moved out.

(Testimony of Vern Humphries.)

Q. Why not?

A. Because Blackard had placed a padlock and refused me entrance into the storeroom.

Q. When was that?

A. That was somewhere around about the 14th of April. It was about a day before the notices was served on me.

Q. And what did you say he did? [122]

A. He placed a padlock upon the door of the storeroom and permitted us to enter.

Q. Did he do anything else?

A. Yes, he changed the lock on the front door. He closed the place down at one o'clock, which we were operating 24 hours a day, put the stools on the counter, turned the stoves out and told customers that he had closed me out of business—I was no longer there.

Q. And on what date was this?

A. That was on the 15th day—night of the 15th of April, the same day he served the paper on me.

Q. And what did you do then?

A. I wasn't there at the time he locked the whole place up and I was called out about one o'clock at night from my home and I came down and consulted with the policeman and I asked Joe first to let me in and he yelled through the door I couldn't get in and I went to the police and they said the best thing I could do was consult an attorney the next morning, and which I did.

Q. Who did you consult?



(Testimony of Vern Humphries.)

A. I consulted Stan McCutcheon.

Q. And what did you do then?

A. Upon his advice I went back over to the Panhandle, which was open then for business as the bar, I went in and taken the stools back off the counter, turned the stove back on and [123] started operation. I called up the wholesale supplies companies and ordered more groceries and so forth to be brought down there to operate.

Q. Now, did you get into your downstairs store-room?  
A. No.

Q. You purchased another inventory, did you say?  
A. Yes, I did.

Q. From whom did you purchase that inventory?

A. From Jack Barrett Grocery Supply.

Q. Did you testify that you had been operating 24 hours a day?  
A. Yes, I did.

Q. And how long had you been operating 24 hours a day?

A. From the day that we opened, the 6th day of March.

Q. Had you ever had a discussion with Blackard and Starns with reference to operating 24 hours a day?  
A. Yes.

Q. And when was that?

A. That was at the end of the contract.

Q. And state the discussion?

A. Well, the discussion, that they wanted the restaurant opened 24 hours a day.

Q. And did they say why?

(Testimony of Vern Humphries.)

A. Yes, because they had lots of liquor around there and so forth and that with the place open they would never be a fire and there would never be a robbery and it was good business at night too, and upon that Joe Blackard advised me to buy a Neon sign for the front window, which I did.

Q. And did you have a discussion about the Neon sign?           A. Yes.

Q. And what was the discussion?

A. It was a Neon sign which stated "Open 24 Hours a Day."

Q. And where was the sign hung?

A. Hung in the front window on the side the restaurant was on.

Q. Did you have an agreement that the sign could be hung there?           A. It was verbal.

Q. When and where and people present?

A. Joe Blackard and myself and Joe Blackard called up the Neon company and they came right down and the Neon man and myself with Blackard agreed to the way the sign would be made.

Q. Did the sign remain there?           A. No.

Q. Where was it hung?

A. It was hung in the front window in the side of the restaurant.

Q. What happened to it?

A. Well, he rented the space out in the front end by that window to the Columbia Air Cargo and the Columbia Air Cargo put [125] their Neon sign up and Joe took my Neon sign down and hung it over the window besides the bar.

(Testimony of Vern Humphries.)

Q. And how long did it remain there?

A. Just a very few days.

Q. Then what happened to it?

A. It was placed in the storeroom.

Q. Who placed it in the storeroom?

A. Joe Blackard.

Q. Did you have a discussion about that?

A. Yes.

Q. Was it an argument?

A. It was an argument.

Q. Did he put the sign back up?

A. No, he refused.

Q. What effect, if any, did this have upon your business?

A. Well, there wasn't anything indicating that there was a restaurant there.

Q. Now, how many businesses were in the Pan-handle premises at the time you commenced operation of your restaurant business?

A. There was supposed to be three of us in there.

Q. And what was there?

A. A liquor store, a bar and a restaurant.

Q. And were any other businesses in there after a while?

A. Yes.

Q. And what businesses were put in? [126]

A. There were card tables put in for gambling, centrally located by the restaurant. There was a Columbia Air Cargo put in the front window on the side of the restaurant front and there was a cab company.

(Testimony of Vern Humphries.)

Q. Did the cab company remain there?

A. No.

Q. Do you know why they moved?

A. Yes, upon their lease they weren't supposed to sublet nothing to anybody and Mr. Campbell and Mrs. Campbell had the cab thrown out.

Q. Where were the card tables located?

A. They was in the back end of the restaurant near the counter of the restaurant.

Q. Were card games conducted?

A. Yes, they were.

Q. For money?           A. For money.

Q. Who owned the card games?

A. Joe Blackard.

Q. Do you know that?           A. I am positive.

Q. Did someone run the card games for him?

A. Yes.

Q. Who ran the card games for him?

Mr. Cottis: Your Honor, I object unless the witness explains [127] how this knowledge came to him.

The Court: Overruled. You may answer.

Q. (By Mr. McCutcheon): Who ran the games for Mr. Blackard?

A. There was three different parties run it, one was commonly known here in town as Red That Runs Card Games, and Mr. Preston, that was two that I know and Barney—I can't recall Barney's last name right now but he is a very well known professional.

Q. Do you know they ran the card games for Mr. Blackard?           A. Knock poker.

(Testimony of Vern Humphries.)

The Court: What kind?

The Witness: Knock.

The Court: K-n-o-c-k?

The Witness: Yes.

Q. (By Mr. McCutcheon): Now, when with reference to the time you opened your business did they start the card game?

A. Immediately after we opened. I would say somewhere around the 8th or the first Saturday that we opened.

Q. Well, how long a period of time elapsed between the time you opened your restaurant business until they put card games in there?

A. About two days. They had the card tables already put in there but somehow or other they weren't opened the same night [128] we opened the restaurant.

Q. Now, what effect, if any, did the card games have on your business?

A. Right at the beginning there was a dispute between Blackard and the man who ran the card games and it was held up for about three weeks then, and then this Mr. Preston taken the card game over and when he taken it over, well, they had card games there every night.

Q. And prior to that time they had not, is that correct?

A. That is correct.

Q. Now, what kind of business did you enjoy prior to the time you had the card games?

A. We had a very good business, very good opening.

(Testimony of Vern Humphries.)

Q. I hand you a piece of paper and ask you to tell what it is?

A. Yes, it is the first month's rent. It is a receipt of the gross we had taken in and the 6% which was in the 21st days of operation which was \$203.45.

Q. Are your gross receipts shown on that paper?

A. Yes.

Q. For what period?

A. For the period—for the month of March, 1948.

Q. And how many days did you operate in the month of March?      A. About 21 days.

Q. And is that paper dated? [129]

A. Yes, it is.

Q. And what is the date?

A. 8th of April, 1948.

Q. And is it signed?      A. Yes, it is.

Q. And whose signature?

A. By Gottschaulk.

Q. Whose?

A. Harry Gottschaulk, an accountant here in town who handled my books.

Mr. McCutcheon: I offer it in evidence.

Mr. Cottis: Mr. Humphries, did you see Mr. Gottschaulk sign this?

The Witness: Yes, I did.

Mr. Cottis: You were in his office at the time?

The Witness: Yes, he was making out our reports.



(Testimony of Vern Humphries.)

Mr. Cottis: And it was signed on the same date that it bears—April 8th?

The Witness: Yes, I gave Joe Blackard one of them too. That is just the copy—one for me and one for Joe Blackard.

Mr. Cottis: And was this handwriting portion on it saying “Receipts made 309085, was that on there?

The Witness: Let me see? I haven’t looked at it in so long I couldn’t say. I couldn’t say just what. That is some adding figure in there, something that doesn’t pertain to this. [130] That is my handwriting but I forget what I put on there.

Mr. Cottis: Was it on there when Gottschaulk signed that?

The Witness: No, it wasn’t.

Mr. Cottis: You actually saw Gottschaulk sign this with your own eyes?

The Witness: I will swear on the Bible.

Mr. Cottis: Your Honor, we object to the introduction of this. I gather that it is presumably to show that some payment was made to Blackard and that as such it has no bearing on the case itself—no indication of payment, and otherwise it is completely irrelevant.

Mr. McCutcheon: It is not a receipt, Your Honor. The purpose of it is to show the gross receipts for that period when he opened his business—21 days.

The Court: Well, the receipt itself, as I see it,

(Testimony of Vern Humphries.)

is not admissible. The witness may search his recollection to say if he knows what he took in in the 21-day period, but it is not a receipt, as counsel has just said and doesn't show any payment to Blackard.

Mr. McCutcheon: I will withdraw the offer.

Mr. Cottis: Your Honor, Mr. Humphries referred to it in his testimony as a receipt and I fear that the jury might be misled.

The Court: Ladies and Gentlemen of the Jury, this paper is not a receipt. It is a statement signed by—appears to [131] have been signed by a man named—accountant as to the condition of the business and as to that amount of business that may be due as rental, but it is no receipt for payment of rental from the plaintiffs to the defendant, Blackard, or to Blackard and somebody else. Counsel may proceed.

Q. (By Mr. McCutcheon): State, if you can, your gross receipts for the first 21 days of your business? A. First 21 days was \$3,090.85.

Q. Now, what margin of profit does a restaurant such as the one that you operated, what margin of the gross profit?

A. Most restaurants have got to operate between a 20-22%.

Q. That is your net, is it? A. Yes.

Q. And under the terms of the original agreement Mr. Blackard was to receive how much?

A. Well, he was to receive about a fourth of the receipts.

(Testimony of Vern Humphries.)

Q. Well, how much was he to receive, what percentage of the gross? A. 6%.

Q. What does that amount to of the net?

A. About a fourth.

Q. Now, what effect, if any, did the card games have upon your business?

A. Well, it was part that I lost customers through the card [132] playing because there were workers there and the other people, that some of the workers I seen play games and get up mad at the card games and said to hell with the damn joint and I know I never seen him back and I know they were eating there permanently and as a result business began to drop off.

Q. And how much did it drop off?

A. Around \$50 a day to \$75 various days, but that wasn't altogether that helped to destroy the business.

Q. Now, were they playing cards for money?

A. Yes.

Q. What hours did they play?

A. The games were generally conducted around starting between six and seven o'clock at night and played until one.

Q. How many tables were there?

A. Three tables.

Q. Where, exactly, were they situated with reference to the counter?

A. Well, one of them—there was two sat across the back end of the Panhandle and the other one out

(Testimony of Vern Humphries.)

in front of it, which would be within about two stools of the counter. They made it impossible also to enter the storeroom to bring out meats and so forth because the gamblers—because every few minutes—because it caused a draft, so Mr. Blackard had us every afternoon to have a supply laid out in the floor so that it wouldn't cause a draft upon the gamblers. [133]

Q. How long were these gambling games carried on?

A. They was carried on until about, oh, I would say they were carried on to around the 1st of May until Mrs. Campbell brought a conviction regarding them to vacate the premises or something.

Q. Now, going back to the Neon sign, did you have a discussion with Mr. Blackard with reference to that Neon sign—hanging of it? A. Yes.

Q. Can you recall the approximate date?

A. Yes, that was somewhere around about the—that was somewhere around between the 1st and the 10th of April.

Q. What were your feelings toward one another after that discussion?

A. Well, there wasn't very good feelings.

Q. Now, at the time the Saloon part of the premises opened up, what did they sell?

A. They sold gin with beer and whiskey.

Q. And after the Neon sign incident what did they serve at the bar?

A. They gave away coffee over at the bar in the morning between 8 and 10:30.

(Testimony of Vern Humphries.)

Q. Now, what hour of the day does a restaurant ordinarily sell the most coffee?

A. In the morning around nine o'clock.

Q. And do you know why they were giving coffee away at the [134] bar? A. Yes.

Mr. Cottis: Object.

The Court: Overruled.

Q. (By Mr. McCutcheon): State, if you know, why they were giving coffee away at the bar?

A. Yes, to hurt my business.

Q. What else did they have at the bar besides coffee? What else did they have in the bar?

A. The only thing they had there was the cups, sugar and cream and spoons and the coffee in the cups, that is all they had.

Q. How long did this continue?

A. Oh, I would say between two and three weeks.

Q. What effect, if any, did that have on your business?

A. Well, that hurt quite a bit, threw quite a damper upon the restaurant.

Q. Now, with reference to the gambling games again, how did the games interfere with your business?

A. Because gamblers were located around the restaurant part, the main games was played right under where we couldn't hardly step for a card table going from our stove from the storeroom into the icebox and for perishable groceries and things



(Testimony of Vern Humphries.)

like that. And they also solicited players quite often at night at [135] the tables when people would be eating.

Q. And what was the customers' reaction to that?

A. Well, there was a few remarked what kind of a place this is. They never returned. I knew the business grew less and lesser.

Q. Now, how long did you operate your business 24 hours a day?

A. Until the 15th of April.

Q. And that is when Mr. Blackard changed the locks on the front door, did he?

A. Yes, he changed—Mr. Campbell—Mrs. Campbell served eviction papers for them to move and likewise they served papers on me to move.

Q. Did you have a key to the other lock?

A. Yes, I did.

Q. Who gave you that key?

A. Joe Blackard.

Q. Did you have an agreement with reference to the key?      A. Yes.

Q. And when did you have that agreement?

A. As I taken and bought the equipment in there and started in I had a key from then on until after noon of the 15th of April and he called the locksmith up and changed the locks on the doors.

Q. Were you then able to get in? [136]

A. No.

Q. And what hours did you operate your restaurant from then on?



(Testimony of Vern Humphries.)

A. All the way from eight o'clock to ten o'clock we were able to get inside the restaurant and operate between eleven and one o'clock at night.

Q. Who determined what hours you could operate your business?

A. Mr. Blackard and Mr. Starns.

Q. And when they closed the bar you closed the restaurant, is that correct?      A. Yes.

Q. What hour in the morning were you permitted to open up?

A. Most of the time—at that time they were being stubborn and they didn't open until ten o'clock in the morning.

Q. Had you enjoyed a breakfast trade prior to that time?

A. We had a good breakfast trade before then.

Q. What did your breakfast trade consist of mostly?

A. Ham and eggs, bacon and eggs, hot cakes and cereals.

Q. What class of people did you serve?

A. Working class of people.

Q. What kind of a luncheon trade did you have?

A. Working class. They stood in line at the seats to sit down to eat.

Q. Were you able to serve lunch after that?

A. No. [137]

Q. Were you allowed to open up in the morning?      A. Ten o'clock.

Q. And why couldn't you serve lunch?

(Testimony of Vern Humphries.)

A. Because it takes four or five hours to prepare a luncheon out, takes two hours to heat a big range up and most of the time it was around one o'clock before we were able to resume operations.

Q. What was your average gross receipts for breakfast?

A. Oh, I would say somewhere around between \$25 and \$40.

Q. And what was your average gross receipts for lunch?

A. I would say our average gross was around \$60.

Q. What was your average gross for the days prior to the time you were compelled to close up for lunch and breakfast?

A. From \$160 to \$200.

Q. And what do you base that statement?

A. I base that upon monthly—some days we did better than others but on the average of 21 days, about \$3500 would average out around \$175.00 a day.

Q. Now, what was the effect on your business of losing lunch and breakfast trade?

A. Well, we finally ended up doing about \$40 a day business, sometimes as low as \$25.

Q. Did you ever ask Mr. Blackard for the key to the front door?      A. Yes. [138]

Q. And did he give it to you?      A. No.

Q. What kind of a credit rating did you have when you opened the business?

A. I could go anywhere in town and buy anything I wanted.

(Testimony of Vern Humphries.)

Q. What kind of a credit rating did you have when you closed your business?

A. I couldn't borrow a penny.

Q. Do you know why your credit rating suffered? A. Yes, I do.

Q. Why did it suffer?

A. It suffered because Joe Blackard maliciously called up different people around and said he was throwing me out, that I didn't have anything and that he was foreclosing.

Q. Who did he call?

A. He called Jack Barrett up, for one that I know. He called him a number of times on the 'phone.

Mr. Cottis: I object as hearsay, your Honor, unless Mr. Humphries testifies as to how he knew that. I am sorry I don't object as hearsay, it is something without his knowledge.

Q. (By Mr. McCutcheon): How do you know that? A. Mr. Barrett told me.

Mr. Cottis: Then I object to it as hearsay.

The Court: The jury is instructed to disregard that [139] testimony as it being hearsay.

Q. (By Mr. McCutcheon): Now at the time your business was closed—on what date did you close your business.

A. On the 21st day of May.

Q. What did you do in connection with that?

A. I put padlocks on the doors.

Q. On what doors?

(Testimony of Vern Humphries.)

A. Both storeroom doors.

Q. How many storerooms did you have?

A. I only had one big storeroom and I had a little hallway like that I had a big icebox.

Q. What was the approximate value of your inventory in the large storeroom at the time you put the padlock on it?

A. It was right at \$1900.

Q. And did you have another storeroom, did you say?

A. Yes, I did.

Q. And where was that storeroom located?

A. It was upstairs in back of the restaurant.

Q. And what did you do in connection with that storeroom?

A. I placed the padlock on it.

Q. And what date was that?

A. That was on the 21st day of May.

Q. And what was the value of the inventory contained in that storeroom? [140]

A. Around \$2,000. I called the United States Marshal down and asked his advice upon the padlock of the doors until we had this straightened out.

Q. And did Mr. Blackard offer to purchase those supplies?

A. No, he refused to buy them and refused to let me sell.

Q. And did you attempt to sell them?

A. Yes, I did.

Q. Did you attempt to sell the business?

A. Yes, I do.

Q. And to whom?

(Testimony of Vern Humphries.)

A. Mr. Guyron. I had the business sold for \$9,000 plus inventory and I brought the man to your office to close the deal and called Mr. Blackard up there and in his presence Mr. Blackard said "No, there would be no deal."

Q. And what then happened to the supplies?

A. I went to the Grocery Wholesale Supply, I owed for some groceries and asked if they would pick up the groceries down there and Joe Blackard refused to let them come in and take groceries out.

Mr. Cottis: Object, your Honor, unless he knows that of his own knowledge.

The Court: How do you know that?

A. They told me.

Mr. Cottis: Objection as hearsay.

The Court: Objection is sustained. Jury is instructed [141] to disregard the testimony as to what somebody else told the witness.

Q. (By Mr. McCutcheon): What did you do with your equipment when the premises was closed?

A. I left the equipment there.

Q. What happened to the equipment, do you know?

A. Yes, it was reopened by Joe Blackard and operated.

Q. Now, did your original agreement contain a covenant with reference to heat, light, fuel?

Mr. Cottis: Object, your Honor, on the grounds the agreement speaks for itself.

Mr. McCutcheon: We will get it out.

(Testimony of Vern Humphries.)

The Witness: Here it is.

Q. (By Mr. McCutcheon): Well, what did the agreement contain?

The Court: You may read it. Don't state your own interpretation of it.

Q. (By Mr. McCutcheon): Read that portion of the agreement that relates to heat, light and fuel?

A. "Blackard agrees to furnish the space, light, heat and water necessary for such operation and to provide the utensils and equipment now on the premises. Humphries represents that he has examined the foregoing and is satisfied herewith."

Q. What equipment did he provide you with, if any?

A. One stove that originally, I guess, I don't know who owned it but it remained in there.

Q. What else?

A. Some cooking utensils and varied and different kinds of pans, a few dishes which wasn't enough for an operation, so I just stored all that stuff. I never did take a close inventory of it.

Q. Now, did Mr. Blackard pay for the heat?

A. No, sir.

Mr. Cottis: Your Honor, I object to that question and answer unless it is clarified. There are two kinds of heat involved here, one for the premises and one for cooking stoves and that sort of thing.

The Court: Overruled.



(Testimony of Vern Humphries.)

Q. (By Mr. McCutcheon): What kind of heat was agreed to that Blackard should furnish?

Mr. Cottis: I object, your Honor, because the agreement speaks for itself on what kind of heat was to be furnished.

Mr. McCutcheon: I am caught between coming and going. First he asked for an explanation and then insists that the agreement speak for itself.

The Court: The witness may testify what was said by the parties. He may not put his own construction upon it. That [143] is a matter of argument to the jury.

Q. (By Mr. McCutcheon): What was said by the parties in connection with that covenant of the agreement?

A. Blackard was supposed to furnish the space, heat, light——

Mr. Cottis: Object, your Honor, until it is pinned down where this conversation took place.

The Court: The objection is well taken. First state the time and place and who was present and then state what was said?

The Witness: This was agreed upon even from the beginning of Mr. Cottis' own writing of the contract, that wasn't developed and finally ended down to this original one here. The same thing remained in it that they were supposed to furnish the space, light, heat and water necessary to operate a restaurant upon a 6% which Joe Blackard was supposed to furnish the material for that part for the higher rent.

(Testimony of Vern Humphries.)

Mr. Cottis: I object to that portion of that part of his answer that says "Joe Blackard was supposed to do this." If he wants to give the substance of any conversation I will make no objections, if it was after the agreement or if they leave any ambiguity in the agreement about his conclusions as to what Joe was supposed to do, I object to it.

The Court: That objection is well taken. What anybody is supposed to do is not testimony. The testimony of an oral agreement is what the parties said. What did he say to you [144] and what did you say to him and when was it said and who were present?

The Witness: Joe Blackard and myself present and we was discussing heat. I was going to rent it out for \$250 a month——

Mr. Cottis: Your Honor, I don't like to be obnoxious but may I have where and when the conversation took place?

The Witness: It was either the second or third day of February of 1948. We sat down and kind of went over similar to a contract which we were supposed to agree to and we agreed upon that I would take and pay a percentage or pay not less than \$200 a month. Mr. Blackard agreed to take and pay of the lights, space and so forth in there, to furnish that upon this 6%. He then taken the notes down and taken them to your office and then the contract was written up.

We brought the agreement then back to Mr. Stan

(Testimony of Vern Humphries.)

McCutcheon's as for his approval upon me signing it and there was a few other things that was in there that I didn't approve of and it didn't state clearly to me so I asked that a simple contract be written up. So Mr. McCutcheon wrote this up with the same conditions upon the space and the light and the heats and so forth like that to be furnished.

Q. (By Mr. McCutcheon): May we have our usual recess now, your Honor?

The Court: Court will stand in recess until two minutes past four. [145]

(Short recess.)

The Court: Without objection from counsel the record will show all members of the jury present.

Mr. Cottis: Your Honor, will there be any chance of determining at this time how much longer the plaintiff's case will last? I have a client that would like very much to be out of town for tomorrow only and I understand the Court will be in Cordova on Friday and I wonder if plaintiff's case will close tomorrow fore-noon?

The Court: Mr. McCutcheon will be able to tell us something about it.

Mr. McCutcheon: I doubt it very much, your Honor. I think probably it will go on all morning and probably part of the afternoon—plaintiff's case.

The Court: Plaintiff's case, that is, including cross-examination?

Mr. McCutcheon: Yes, sir.

(Testimony of Vern Humphries.)

The Court: I presume that counsel will not care to waive cross-examination of any of these witnesses?

Mr. Cottis: No, your Honor. Am I correct in recalling that the Court will be in Cordova on Friday?

The Court: Yes, the Court will be in session in Cordova on Friday and Saturday and it will return Sunday and will be in session again here on Monday.

I assume from what counsel have just said that there is [146] no chance of finishing the case tomorrow. I said that we might finish it tomorrow but it looks as though it might take most of tomorrow to put on plaintiff's case and, therefore, counsel, unless the witness he refers to is his own witness may be safely excused until next Monday.

Mr. Cottis: Thank you, your Honor.

The Court: I assume it will take sometime to put on the defendant's case aside from this witness to whom counsel has referred?

Mr. Cottis: That is correct, your Honor.

The Court: Well, we know that virtually the first witness—I believe we did have Mr. Hoff on the stand—this is practically the first witness and he is still on direct examination and he has been so since 10:20 this morning, about. Counsel may proceed. I am not trying to hurry counsel.

Q. (By Mr. McCutcheon): Who paid for the lights while you were in business, Mr. Humphries?

A. I did.

(Testimony of Vern Humphries.)

Q. Who paid for the heat while you were in business? A. I did.

Q. Who paid for the fuel while you were in business? A. I did.

Mr. Cottis: Your Honor, I object to these questions unless they are clarified as to what heat, what lights and what fuel? [146]

The Court: Counsel will have the right to cross-examine and clarify them. It may be well to clear them up now. What do you refer to by "lights, heat and fuel"?

The Witness: I paid for the lights on the Panhandle Restaurant.

The Court: And heat?

The Witness: For the Panhandle Restaurant.

The Court: What do you include in "heat"?

The Witness: For the cook ranges and also it heated the inside of the restaurant.

The Court: And the space around the restaurant?

The Witness: Yes, at that time the furnace was broken down and there was no heat in there except the heat from the restaurant range.

The Court: Counsel may proceed.

Q. (By Mr. McCutcheon): Did you ever have a discussion with Mr. Blackard with reference to the payment of the lights? A. Yes.

Q. And when and where and in whose presence?

A. The first I knew he wasn't going to pay for them was when our lights were turned off at 12 o'clock. Mr. Blackard had them turned off and I rushed down to see what was the matter at the City



(Testimony of Vern Humphries.)

Lights and they said "You have never paid your light bill." I ran back and got the contract and they called [148] Joe Blackard up on the 'phone "Here under your agreement you are supposed to have the deposit up here" and Joe Blackard agreed that he would come back later and settle it so they wouldn't turn the lights on. So I made the deposit.

Q. How much of a deposit did you make?

A. I made \$240.00.

Q. I hand you a piece of paper and ask you what it is?

A. That is a check that I gave to the City of Anchorage.

Q. What is the date on it?

A. The date on it is April 20, 1948, Bank of Alaska.

Q. Who is it signed by?

A. It is signed by Alaska Food Service, Vern Humphries.

The Court: Is there objection?

Mr. Cottis: Object to the relevance, your Honor, unless it is connected up later.

The Court: Objection is overruled. It may be read.

Mr. McCutcheon: Will counsel stipulate that the reading of the check be waived?

Mr. Cottis: Certainly.

Q. (By Mr. McCutcheon): You testified you put locks on your supply room at at the time you closed your business down, did you, Mr. Humphries?



(Testimony of Vern Humphries.)

A. Yes, I did.

Q. Did those locks remain there? A. No.

Q. Who removed them?

A. They were broken off by Joe Blackard.

Q. Do you know it of your own knowledge?

A. Yes.

Mr. Cottis: —and unless he shows how he knows it?

Q. (By Mr. McCutcheon): How do you know it?

A. I came to the restaurant, the lock was off and the groceries and meat was loaded on a black truck in the back of the Panhandle that belonged to Jack Guard. I rushed up to the United States Marshal and brought him down. The locks were broken and the United States Marshal says "Who broke them?" "I broke them myself" he told me and he told the Marshal—the Marshal said "You get locks and put back on there and put the stuff back in the storeroom."

Q. What was on the trucks?

A. Meats and chickens and groceries.

Q. And what happened to them?

A. They was ordered to put back into the storeroom.

Q. And were they put back in the storeroom?

A. They was thrown back in.

Q. How long did they remain back in the storeroom?

A. Later on I came back down and the meat was not put back into the freezers. They was placed

(Testimony of Vern Humphries.)

on a cupboard there that was in the storeroom and also on the floor and in the sawdust [150] and so forth like that.

Q. And did the Territorial Health Inspector appear on the scene at that time?

A. Yes, and Joe Blackard called me a Health Inspector down and showed him, Marvin Campbell and myself and we seen the meat on the floor and all over the sawdust. We put it back into the ice-box. We knew it wasn't fit then to use but we still knew that it was ours and it was paid for and that we wanted to show to some legal authority how he was destroying our stuff. Then Joe Blackard had called, in the meantime had called, Mr. Moon——

Mr. Cottis: Object unless Mr. Humphries knows of his own knowledge.

The Witness: I know it of my own knowledge. I talked to Mr. Moon and seen him there.

Mr. Cottis: Object to as hearsay.

The Court: Overruled.

The Witness: I talked to Mr. Moon.

Q. (By Mr. McCutcheon): Did you get your information from Mr. Moon that Mr. Blackard had called him? A. From both of them.

The Court: If you got them from Blackard——

The Witness: Yes, Blackard said he called Mr. Moon. He told the Marshal also and the Marshal then condemned the stuff, which anybody would condemn. [151]

Q. (By Mr. McCutcheon): The Marshal or the Inspector? A. The Inspector.

(Testimony of Vern Humphries.)

Q. And then what happened?

Mr. Cottis: Object to the leading questions.

The Court: Overruled.

The Witness: He told me to destroy the meat.

Q. (By Mr. McCutcheon): What happened to them?

A. I don't know, the last I seen they were throwing it on a truck. But the place was already closed down and had been closed down for several days and padlocks on the door. We weren't in business of operating a restaurant.

Q. Now, it states in Defendant's Exhibit "A" that you have failed to comply with the law and that you illegally had moose meat on the premises. Now, were you arrested for having illegal moose meat?

A. Yes, sir.

Q. And when was that?

A. That was on the—it was somewhere around the 14th of April.

Q. And how long after Mr.—was it before or after Mr. Blackard served this notice on you?

A. It was just before.

Q. How long before?

A. It was one day before, I am sure. Wait a minute, I believe that it was either—it was the 12th or 13th of April. It was possibly two days before.

Q. That you were arrested for having illegal moose meat?

A. Yes, sir.

Q. And did you plead guilty to that charge?

A. Yes, I did.

(Testimony of Vern Humphries.)

Q. And did you pay a fine? A. Yes, I did.

Q. How much of a fine did you pay?

A. \$300.

Q. And were you guilty? A. No, sir.

Q. Now, how does it happen that you pleaded guilty if you weren't guilty?

A. Because on this night in the afternoon, well, I rented my car out——

Q. Just a moment, did you have a discussion with Holger Larsen with reference to pleading guilty?

A. Yes, I did and he advised me——

Mr. Cottis: Objection, your Honor, on the grounds of hearsay.

Q. (By Mr. McCutcheon): Did you then plead guilty? A. I pleaded guilty. [153]

Q. And paid a fine?

A. Paid a fine of \$300.

Q. And why did you plead guilty?

A. Because right at that time I could not prove my innocence.

Q. Any other reason?

Mr. Cottis: Objection, your Honor, he is leading the witness.

The Witness: Yes, I stood a chance of loosing my car because it was found not in the Panhandle premises because it was found in the back end of my car in the alley in back of the Panhandle. I stood a chance of loosing my car and taking a fine of about \$500 and a sentence to jail.

Q. (By Mr. McCutcheon): How do you know that?

(Testimony of Vern Humphries.)

A. Because Holger Larsen told me.

The Court: Wait a minute, you are going too far. Counsel objected.

Mr Cottis: Yes, your Honor.

The Court: Objection is sustained.

Q. (By Mr McCutcheon): Did you know at that time how the moose meat got in your car?

A. No, sir.

Q. Do you now know how the moose meat got in your car? A. Yes, I do. [154]

Q. Who put it there? A. Joe Blackard.

Q. Do you know that? A. I know that.

Mr. McCutcheon: Your witness.

Mr. Cottis: Your Honor, I object to the last questions and ask that they be stricken unless he explains how he knew that.

The Court: Motion is denied.

Mr. Cottis: What was your Honor's ruling?

The Court: Motion is denied.

### Cross-Examination

By Mr. Cottis:

Q. How do you know Joe Blackard put it there?

A. Because Joe Blackard had borrowed my car on this same afternoon at 4:30. Joe and he had used my car until——

Q. Joe and who?

A. Joe Blackard had borrowed my car and used it until about 15 minutes of my arrest. It was on the night I was supposed to get the payroll checks

(Testimony of Vern Humphries.)

from the bookkeeper and I proceeded to go out to the car. Joe had come into the place and said "Your car is out there." In a few minutes when I went out to the car with Marvin Campbell, just as we approached the car parked in the back of the Pan-handle two officers and Joe Blackard steps [155] out and says "Put your hands in the air." We put our hands in the air, not knowing. I started to put my hands down and was ordered to put them back up again. We stood there for a matter of about 30 minutes and Mr. Larsen, the Game Commissioner, showed on the scene and Joe Blackard then right at that time he tossed his gun over the fence and he wanted to know what the city police—what all the disturbance——

Q. My Humphries, are you responding to my question?

A. I am answering, you asked me how I know.

Mr. McCutcheon: I submit, your Honor, that he is answering the question.

Mr. Cottis: That is all I want to know.

The Witness: So Mr. Larsen wanted to know what kind of meat, where was it at and so forth and Mr. Blackard ran over to my car and opened the trunk of the car and he said "See, see, here it is." So I was arrested. Right at that time I didn't know who even who had turned me in but a few minutes later I did know who turned me in, who had reported. Mr. Blackard when he brought my car back reported to the police.



(Testimony of Vern Humphries.)

Q. (By Mr. Cottis): How do you know, that is the question?

A. The only way I know is by the police telling me so.

Mr. Cottis: Your Honor, I ask that the answers be stricken out as not responsive and his answer to Mr. McCutcheon be stricken out as hearsay and matters not within his knowledge. [156]

Mr. McCutcheon: I was afraid Your Honor was going to rule before I could be heard. I apologize for the interruption.

The Court: Motion is denied because most of the answer and all except the very last part is directly responsive to the question and is competent and relevant, admissible. The last part that the policeman told him something may be stricken, because that is hearsay. The jury is instructed to disregard the statement of the witness as to what the police told him, otherwise the answer stands.

Mr. Cottis: Your Honor, I dislike to belabor the point but I would like to state one further thing. My objection is also based on the ground that it is a conclusion of the witness and I grant you the answer is responsive as to how he formed that conclusion but his conclusion itself is inadmissible.

The Court: No, it is true that the witness didn't testify to seeing it but the witness testified to a set of circumstances which, I think, may properly go to the jury. It is up to the jury to determine,

(Testimony of Vern Humphries.)

whether in the first place, the credibility of the witness, of course, as with all witnesses; in the second place whether under the circumstances anybody is justified in believing that Blackard is the one who is responsible for the moose meat being in the car. That is a question for the jury. I think it is a matter in which the jury may draw legitimate inference in one fashion or another and, of course, that inference is for the jury alone, and the Court would [157] would be entirely out of order to express any opinion upon it. But the testimony may go to the jury.

Q. (By Mr. Cottis): Now, Mr. Humphries, what was the date that you lent Blackard your automobile? A. 13th of April.

Q. Could it have been the 14th?

A. No, it was—I remember very correctly.

Q. And it could not have been the 12th?

A. I am sure that it was one of the dates. It was about two days before. I know it was either the night of the 12th or the 13th and I am pretty sure it was the 13th instead of the 12th, but it was one of the two days.

Q. At that time you had been operating the restaurant for little over a month, is that correct?

A. That is correct.

Q. Now, during the first three weeks, I believe you stated, there was no card playing on the premises? A. Something like that.

Q. And then for the next week and one-half there was card playing, is that right?

(Testimony of Vern Humphries.)

A. It was longer than a week and one-half then, it was somewhere in there. It was card games going after we first opened there the 6th of March.

Q. And I believe you stated that it was prior to April 15th [158] that the storeroom was locked?

A. Yes, sir.

Q. And you are sure that that was before April 15th?

A. I am sure it was.

Q. Was that before——

A. I am sure it was right on the day of the 15th.

Q. It was on the day of the 15th?

A. Yes, sir.

Q. Was not prior to the moose meat affair?

A. It was right after the moose meat affair.

Q. Now, you stated, did you not, that the Neon sign was removed?

A. Yes, I did.

Q. And when did that occur?

A. Well, that occurred somewhere right along in there, too. It all occurred in the early part of April.

Q. Can you place it with respect to the moose meat matter?

A. Can I replace it with respect to the moose meat matter?

Q. No, can you place it with respect to the sign removal?

A. Yes, because there was a funny situation there, the day before the moose meat the sign was taken down and Mr. Blackard had a fight, quite a quarrel, that we left not on very good speaking terms and then he walked in and asked to borrow

(Testimony of Vern Humphries.)

my car the next day. I turned around to Mr. Stan Kearney, who was standing behind me and I said "That takes a lot of nerve" but [159] I let him use my car.

Q. And that was a day after the quarrel with Blackard?      A. Yes, sir.

Q. Had Blackard borrowed your automobile often?

A. Yes, Blackard to begin didn't have a car. Later on Mr. Starns gave him his.

Q. On the other occasions that Blackard had borrowed your car had there ever been moose meat in it?      A. No, sir.

Q. It is true, isn't it, Mr. Humphries, that for sometime you served moose meat in that restaurant prior——

A. There never was any moose meat served in my restaurant.

Q. You never obtained any moose meat from Palmer?      A. Absolutely not.

Q. Did any one in your employ?

A. No one in my employees, to the best of my knowledge, would stoop to do it.

Q. How long had Harry Gottschalk taken care of your books?

A. He had taken care of most of them all the way through excepting the last in May he didn't get—have him, he didn't take our receipts. Mr. Campbell then became a partner helping me around there, more or less a partner at the time, and he is

(Testimony of Vern Humphries.)

a bookkeeper and I was turning it over and Mr. Campbell was setting up another set of books to save that \$100 a month fee.

Q. What do you mean "Mr. Campbell was more or less \* \* \*"? [160]

A. Mr. Campbell before that was working for me and I made Mr. Campbell a proposition to become a partner.

Q. When was that that you made that proposition?

A. That was somewhere around about the—I would say—I would say that taken place somewhere around the 1st of April.

Q. And you were partners after that, were you?

A. Yes. There was no written thing on it; it was just all verbal.

Q. When Havins sold his interest in the contract with Blackard to Jones did you agree to that sale? A. Yes.

Q. Do you know what the purchase price was?

A. Yes, \$500.

Q. That \$500 bought a half interest in the business conducted by you and Havins?

A. No, it didn't.

Q. What interest did it buy?

A. It only bought a fifth, but he was to work it out as his wages accumulated there, so much of his wages outside of his living expense was supposed to go to me until such time as he had me paid up.



(Testimony of Vern Humphries.)

Q. Until he had the \$500 paid up?

A. No, until he had his half of \$2,500.00 paid up. He put in \$500 and was expecting to get more money to go into the business and it went along for about 3 weeks and he so far hadn't succeeded in getting [162] the rest of his money so we agreed upon him paying me off and taking it out of wages until him and Mr. Blackard got in a quarrel and Mr. Blackard asked me if there couldn't be something done about getting him out of the way. And so Richard Jones came by and Mr. Blackard and myself agreed that Richard could buy the place—was a nice buy. He had worked down here at the railroad.

Then Mr. Jones was there for about three weeks until Mr. Jones had to knock down one of the gamblers to get him away from his wife, trying to insult her there at the counter. Mr. Blackard was going to terminate the lease or Jones must go and so, keeping things down at the time, I paid Jones money, paid him \$20 a day for his labor for what time he was in there.

Q. And that resulted in this release that you put into evidence?      A. In what lease?

The Court: I think the word was "release."

The Witness: It is just one sheet of paper. I know now what you mean.

Q. (By Mr. Cottis): How long did Havins operate with you?

A. Havins operated up until about a week be-



(Testimony of Vern Humphries.)

fore we opened. I say somewhere around, maybe. It was around the 20's of around February; it was around the 28th, but I can't recall the exact date. [162]

Q. Anyhow it was toward the end of February?

A. It was within a few days of when we opened and we opened on the 6th of March.

Q. Will you tell how you came to break up with Havins?

A. Mr. Blackard said he didn't care for him and he said he had seen he wasn't any part of a restaurant man and in that respect Blackard was true. But him and Havins there was quarreling so we eliminated him. But Havins we gave him back his \$500 when he asked for it. He hadn't spent no money or helped remodel the place or anything. He was out here and he was just let off the police force or quit the police force.

Q. That was about the end of February in there, about the 28th?      A. That is right.

Q. At that time you gave back Havins' \$500 and took in Jones for \$500?

A. No, Richard Jones paid him.

Q. Directly?

A. Directly. There was some transaction in Stan McCutcheon's office, which I don't know that I ever went into at the time.

Q. And then you and Jones operated for about three weeks?      A. Something like that.

Q. And then you bought Jones out?

(Testimony of Vern Humphries.)

A. Yes, I did.

Q. And the nature of that purchase was to pay Jones, in effect, [163] for the labor, for the time that he put in with you?

A. Jones had \$500 paid toward the equipment and he had worked such time that it amounted to \$250 or \$260, something like that, it was over \$200. So then I gave Jones \$750 or 60-dollars and Jones was very happy, which he is back down at the railroad and I am sure he would tell the same story.

Q. Where was Havins when you bought Jones out?

A. Havins—where was Havins?

Q. Yes, was he around?

A. Yes, Havins was around.

Q. But your dealings with Havins and Jones' dealings with Havins had been completed toward the end of February?

A. With both of them, you mean?

Q. Well, Jones' purchase from Havins was at the end of February?

A. Yes.

Q. And your agreement, whatever it may have been, that Havins would no longer associate himself in the business was toward the end of February?

A. Yes.

Q. Did you have any further transactions with Havins with respect to this business?

A. Transactions? No, I never had no more transactions with him, no.

Q. Will you explain to me why Havins executed Plaintiff's [164] Exhibit No. 5, which is dated March 26th?

(Testimony of Vern Humphries.)

A. Yes, upon March 26th is when I bought Mr. Jones out and at that time I hadn't seen the paper that was supposed to have been left up where Jones had paid Havins for his part and I called Mr. McCutcheon up on the 'phone and asked him would he—Kenneth Havins was leaving town and that I wanted to clear a bill of sale that they held no obligation against me whatsoever and they both went across the street and signed it.

Q. Although you had had no dealings with Havings since the end of February?

A. Except that I had him sign a release that I would have in my possession in case anything ever came up, and this is it.

Q. And then you operated alone for a while or with Mr. Campbell as an employee, is that correct?

A. That is correct.

Q. About how long was that relationship in effect?

A. I would say, right off hand I would say he was working there, Mr. Campbell was working for me and began work on the 6th day of March as a dishwasher and he remained a dishwasher until somewhere around about the 1st of April, to my best knowledge.

Q. And then at that time why you went into partnership with each other? A. Yes.

Q. Would you care to state the terms of your partnership [165] with Mr. Campbell?

A. Yes.

(Testimony of Vern Humphries.)

Q. Will you please?

A. Yes, Mr. Campbell was going to be down there in the evening and I had noticed his work and his ability and that I knew above all things that he is very honest and conscientious boy. However, Mr. Blackard was opposed to him being there also, but he stayed. And I was in my car and had a flat tire and I mashed my finger off on a bumper jack. I was laid off for about a week. I turned all my business over to Mr. Campbell when I was up. I said, "I am going to tell you what I am going to do with you. How would you like to become a partner in this with me?"

Q. Did Mr. Campbell pay you anything for his interest?

A. I borrowed from Mr. Campbell. I borrowed somewhere around \$450 from Mr. Blackard and upon the 6th day of March Joe Blackard needed his money and I borrowed at that time \$500 from Mr. Campbell to pay Mr. Blackard back and I in about ten days then I paid Mr. Campbell back.

Q. And that was that Mr. Campbell put into the partnership—that loan to you?

A. No, it wasn't. Mr. Campbell would stand from then on as a partner and I would give him half to go. I needed somebody as a partner. I knew I would be laid up for six or seven more months because I had to go outside and have this wound attended to. I had blood poison. And I said, "I will take and give you [166-167] this and you run it."

(Testimony of Vern Humphries.)

Q. So, because of the fact that he was going to run the business while you were outside?

A. I made him a partner.

Q. You made him a partner. And he didn't have to put in any cash because his services were going to be payment for his share of the partnership?

A. His payment of what? I didn't get that?

Q. His payment for the share of the partnership?

A. He didn't have no payment to make.

Q. That is what I mean. Was there any written partnership agreement between you?

A. No, sir, there were not and we are still in partnership now back east and we don't have any written.

Q. You are still partners and you still have no written agreements?

A. Yes, sir.

Q. Where are you operating now?

A. We are operating a little place in Kansas right now.

Q. How long have you been operating there?

A. Well, since about latter—about the first of August of last year, when we had a sudden flood here about six weeks ago and I was washed away, and almost washed away ourselves.

Q. And are you both residing there yourselves too, do you both live there? [168]

A. Yes, sir.

Q. So from the first week of April on, Mr. Campbell was a full partner with you?

A. Something like that.



(Testimony of Vern Humphries.)

Q. And under your oral arrangement you were to split the profits and losses fifty-fifty?

A. That is right.

Q. As you were equal partners in the business?

A. That is right.

Q. In connection with your partnership agreement, your oral arrangement with Mr. Campbell, was there anything in connection with the eviction action against Blackard from the Panhandle premises?

A. Now, will you state that again, I didn't quite grasp it. I was thinking.

Q. Was any portion of the arrangement that was made between you and Mr. Campbell concerned with the eviction action which was shortly brought into Blackard?

A. No, sir.

Q. There was no deal between you that if Mr. Campbell came in as a partner——

A. No, I was planning on going out to the States and Mr. Campbell was going to stay in the restaurant until I got back and whether he was going to remain in or not it was never discussed. [169]

Q. Mr. Humphries, I show you what purports to be the amended complaint in the cause that is now being tried, Cause No. A-4979, and ask that you tell me the filing date as shown by the Clerk's stamp on that amended complaint?

A. Now, it is May 7, 1948.

Q. And I ask that you read paragraph 3 of that amended complaint. Will you read that aloud?



(Testimony of Vern Humphries.)

A. "That on or about the 4th day of February, 1948, at Anchorage, Alaska, defendant, Joseph Blackard, entered into a lease agreement with plaintiff, Mr. Vern Humphries, whereby defendant agreed to lease to plaintiff Vern Humphries, for the period of one year, space in said premises adequate for the operation of a restaurant business and whereby defendant, Joseph Blackard, further agreed to furnish space, light, heat and water necessary for such operation and to provide the utensils and equipment for said operation, a copy of said lease being attached hereto and made a part of this amended complaint, marked 'Exhibit A.'"

Q. Now, on the 4th page of the complaint whose signatures appear under the verification stating that the complaint is true?

A. On which one, now?

Q. Here.

A. Vernon Humphries and Marvin Campbell.

Q. And you read the complaint before you signed it?

A. Yes. [170]

Q. Now, on Exhibit "A" which follows I wish you would compare for me the Exhibit "A" attached to the complaint that was filed May 8th, that complaint there, and your Exhibits 2 and 3 and take your time and tell me whether they are identical so far as wording goes or whether they are not. This is your Exhibit 2 with your interlineations that you recall and this is your Exhibit 3, which was attached to the complaint in Cause of Action

(Testimony of Vern Humphries.)

5001, now would you compare your Exhibit 3 and your Exhibit 2 with this exhibit attached to your complaint in this action and tell me whether they are the same or not?      A. Exhibit 2 is which?

Q. Exhibit 2 is this.

A. I still don't quite follow you.

Q. You will recall, Mr. Humphries that we have now in evidence two different agreements—one of which has these interlineations in it and one of which doesn't and both of which have been signed?

A. Yes.

Q. I would like to know whether the agreement——

A. This one is a copy of the original or this one or this.

Q. Exactly.

A. I know positively that this is a copy of the original.

Q. That is, that Exhibit 2 is a copy of what?

A. The original.

Q. Well, it is an original isn't it? It is signed by everybody? [171]

A. But it was amended though and retyped up and was resigned over, you remember, this one.

Q. Well, we have not yet produced the signed copy of the retyped exhibit have we or the retyped agreement?

A. Mr. Blackard must have had one. I had one but I couldn't explain—as near as I can explain is what happened to mine. I had half of my furni-

(Testimony of Vern Humphries.)

ture stolen as well out of my home. We left everything up here, expecting to return, and a fire happened and everything was destroyed out of the house even the beds, but what happened to Mr. Blackard's I don't know, but this is the one we agreed upon for a final paper to be typed and signed.

Q. Vern, you are getting off the track here a little. Is this one that is attached to your Complaint in 4979, is that a copy of this or this or of Exhibit 1?

A. I still don't quite get it.

The Court: I don't want to interfere with counsel's cross-examination, perhaps the use of leading questions would shorten it up, I don't know, whatever counsel desires to do can be done because he is conducting his own cross-examination.

Mr. Cottis: Thank you your Honor.

Q. Vern, this is the first agreement that is put in evidence and it is marked Exhibit 1. Now, this is a signed copy of the agreement which you testified that this Exhibit 2 with the penned in interlineations is really the final agreement, do you [172] remember that? A. Yes, sir.

Q. Which of these agreements is attached to your Complaint which was filed on May——

A. It is a copy of this one.

Q. It is a copy of Exhibit 2?

A. My attorney made out the papers and I am pretty sure they are in order.

Q. When you signed this Complaint here, how did you know that this was true copy of the agreement?

(Testimony of Vern Humphries.)

A. Because Mr. McCutcheon had this here to go by.

Q. He had this interlined one?

A. Yes, sir, and I am sure that he had the original one which was at one time at his office but I think I took it back to the house. I can't find it and I don't know, so I just can't hardly answer you, but he must have went by either this or the original.

Q. Vern, you didn't sit down and compare this with this word for word when you signed the Complaint?

A. No, I relied upon Mr. McCutcheon for most of it. I outlined what I wanted and what had happened and so forth and it was typed up and it was signed and if there was an error I am sorry.

Q. You still can't recall who made these interlineations here? [173]

A. Yes, well, I won't say because it is rather difficult to say which one did. I know positive that it wasn't me but there was four of us there and I wouldn't swear now because there was nothing that stood out then from my mind to function on it to say what happened.

Q. You testified that about two weeks after that was signed—that would be 14 days after February 4th, around February 18th, plus or minus—you had another conversation with Blackard and Starns and I can't recall whether McCutcheon was there or not, and you orally modified that agreement. You

(Testimony of Vern Humphries.)

changed certain aspects of it. For example you waived the requirement that you furnish a \$3,000 bond, do you remember that testimony?

A. Yes, we didn't—we just demanded that certain principles in this one, which was, I was going to hold for my 18 and they bargained with me and made me an offer and likewise we agreed upon it if they moved and stood the expense of moving the restaurant further back, that they could have the space there and that the bond was waived by Mr. Blackard.

Q. Just a minute, Vern, will you place that conversation for me, did that take place in the Panhandle?

A. It taken place in the Panhandle.

Q. And about when was it?

A. It was somewhere around, I believe, around the 9th or the 10th.

Q. Of February? [174]

A. Of February it was or it could have been a few days—yes it was more than that, I would say it was towards the latter part of the month.

Q. After February 25th, do you think?

A. Oh, it was before that. Yes it was positive before that. It was way before that; it was when Mr. Starns was building his liquor store and he started building somewhere around, I believe, the 10th of the month and it was very shortly right in there. Right now I can't recall, my mind is getting tired. I can't quite recall whether just the



(Testimony of Vern Humphries.)

day it was on, but it was right in there sometime around the 10th and the 15th in there somewhere.

Q. Would you rather adjourn now? I mean are you feeling actually tired mentally?

A. Well, I have been up here all morning. Yes, I am tired but I will do my best.

Mr. Cottis: I have no objection, your Honor. I don't want to tire the witness and I am going to cross-examine him at some length.

The Court: Mr. Humphries looks like a young and vigorous man.

Mr. McCutcheon: I was about to say I was tired too, if counsel wants to go home, if he wants to ask me?

The Court: I think the unanimous thought—Mr. Cottis hasn't expressed himself yet—but I gather he is not averse [175] to adjourning.

Ladies and Gentlemen of the Jury, we will suspend at this time until tomorrow morning at 10 o'clock and you will remember the provision of the law which forbids you to discuss the case among yourselves or with others or listen to any conversation about it or to form or express an opinion until it is finally submitted. Maybe it would not be inappropriate for me to refer a moment to the forming of an opinion. I think all human beings are a bit inclined to form an opinion about a thing without knowing all there is to know about it, and so you will try to bear that in mind. Do not make up your minds as to the merits of the case until



you hear all of the evidence, all of the arguments of counsel and, also as to law the instructions of the Court, and then you will be in better position to do justice.

The Jury may be excused until tomorrow at ten o'clock.

(Whereupon, at five o'clock, p.m., Wednesday, May 22, 1949, the case was recessed until the following morning at ten o'clock, a.m.)

Thursday, June 23, 1949

The Court: Clerk will call the roll of the jury in the box.

(Names were called and responded to.)

The Clerk: They are all present, your Honor.

The Court: Mr. Humphries may resume the stand. Counsel may proceed with the examination.

Mr. Cottis: I wonder if the Bailiff would move the blackboard over here.

The Court: I should advise counsel that for a year or more I have not permitted any blackboard illustrations by witnesses or others for the reason that they are not permanent and any drawings should be made on paper so that they may go in as exhibits, if that be desired, and in the event of appeal they will be available for the Appellate Court. I understand that we have here some large sheets of paper and the drawings should be made upon the paper rather than the blackboard because the blackboard drawings are erased and then all

memory finally is lost. At any rate they are not available.

### VERN HUMPHRIES

having previously been sworn, resumed the stand and testified as follows:

#### Cross-Examination (Continued)

By Mr. Cottis:

Q. Mr. Humphries, would you step down. Could you sketch [179] for the jury the premises and show where the liquor store was and where your counter was originally and where it was moved to? Perhaps you could show Fourth Avenue down toward the bottom of the sketch and then show the premises in relation to Fourth Avenue, in that way perhaps it would be clearest to the jury.

The Court: Since all of the maps that we ever saw have the top of the map to the north and the bottom the south side, you will have the witness put it in.

Q. (By Mr. Cottis): Fourth Avenue then would be at the top?

The Court: Does Fourth Avenue run east and west?

Q. (By Mr. Cottis): Does Fourth Avenue run east and west?

The Court: Well, draw Fourth Avenue running east and west.

Q. (By Mr. Cottis): And then the premises in question—correct me if I am wrong—were on the

(Testimony of Vern Humphries.)

south side of Fourth Avenue, Mr. Humphries?

A. Yes. Do you want the premises before remodeling?

Q. First before and then afterwards would leave it the clearest.

The Court: One of the jurors thinks that it is on the wrong side of the street.

Q. (By Mr. Cottis): Will you explain where the building was with respect to Fourth Avenue, Mr. Humphries? [180]

A. This is Fourth Avenue running that way.

The Court: Draw two lines so as to indicate the street.

Q. (By Mr. Cottis): Mr. Humphries, feel free to use the entire piece of paper to show the premises so that it will be clear to the jury.

A. This is the entrance of the Panhandle before it was remodeled. This was a cab stand in the front end on the side of the bar. This is the bar here. This is the hallway leading down into the basement to the storeroom. This is the men's lavatory.

Mr. McCutcheon: People on the far end of the jury can't see you.

Q. (By Mr. Cottis): Mr. Humphries, couldn't you draw——

The Court: I think if you are going to make a new drawing you had better turn over the sheet or get a new sheet.

Q. (By Mr. Cottis): Now, Mr. Humphries, this is north up here, is that correct?

(Testimony of Vern Humphries.)

A. Yes. I am not very good at drawing but perhaps I can explain it. This is Fourth Avenue. This is the Panhandle at 315 Fourth Avenue. This was the entrance of the Panhandle. There was a little entrance for a little partitioned-off place which I think was a Federal Cab in there. This here is a bar of the Panhandle. This is the door here leading into a hallway to go down into the basement into the furnace room in the [181] storeroom of the restaurant. This is the men's lavatory. This is the back door here and right as you go out at the back door there was a stairway leading up to an annex upstairs one-room apartment. Over here on this side here, the front window. And here is where the restaurant sits. This is the counter right up to the front and then there was—it run down somewhere around 33 feet.

Then there was a room over on this side where the War Surplus Store, which is known as the Annex, I believe, and this door here entered into the Annex and there was a room partitioned off in there, which the Panhandle had leased someway or other or something there, and this is the Ladies' rest room here. Now, that is the nearest——

Q. Was there a cabinet back in this area somewhere, Vern?

A. In here there is a little partition and this was kind of partitioned off, just a little plyboard up here, and this is still the entrance that you can go into the stairways that you go down into the storeroom.

(Testimony of Vern Humphries.)

Q. Is there a storeroom in this corner somewhere or was there before the alterations?

A. Along the back wall there was a few little cupboards and right in here was a little long, narrow, slim room built there for an icebox to sit into, which there was a walk-in box set in there—a reach-in box I must say—and it was just about two feet space walking by you and there was a room in there for [182] a meat saw and to work your meat up in there and that was about all the room there was.

Q. Was there a meat saw in there?

A. Yes, there was a meat saw.

Q. And there was an ice-box in there—a walk-in?

A. Not a walk-in, a reach-in box.

Q. Did this little room extend west to the west wall of the building, was it about 14 feet long, in other words, wide?

A. Oh, I wouldn't say just how many feet it was. I remember they tore it down about the same days I bought in there and I was never in the Pan-handle before I bought in there.

Q. Those are the premises as they existed prior to what date?

A. They existed to the time that we signed the agreement on the 4th day of February. The remodeling started the 5th or the 6th.

Q. No remodeling was going on prior to the 4th?

A. No, there was not to my knowledge.

Q. Was there a card room through this door?

A. To my remembering there was some beer

(Testimony of Vern Humphries.)

stored in there and Mr. Larry Starns—the only time I was in there was one time, and right besides this door here he had a big large desk and then he had two or three trucks, as I remember, right here, because I helped later to set them outside.

Q. How many stools at this counter?

A. 16 stools at that counter—17 I must say. [183]

Q. Was there any around the end here?

A. No, sir, there were not.

Q. Did this taxicab area in the northeast corner have any entrances directly into the bar—into the Panhandle premises—or was the only entrance the one that you have shown?

A. The near as I can remember, it had an outside entrance. Now, come to think of it, I believe that this here—yes, it had a door here, I remember, because Mr. Blackard was quite often in there and there was a safe in there and there was no cab stand in there, if I remember right. Is that right, Joe?

Q. Now, were there poker tables in here, Vern?

A. No, there weren't.

Q. There were not?

A. There was not. Upstairs here, I think, if I remember right, there were three boys living up there and there was a card table sitting up there but to my knowledge it wasn't being used. They was using it and using it more or less for a dining room table or something.

Q. All right, now, that completes it as near as you can recall? I know it has been a long time.



(Testimony of Vern Humphries.)

A. That was about the way it was then.

Q. With 17 stools along here?

A. Something like that.

Q. Are you sure it was 17?

A. I know—no, wait a minute, it was room for 17. They [184] had them spaced two feet and five inches apart and we was adding making the 17 stools. That was the way, we had taken the stools up to move them.

Q. How many stools were actually there—16?

A. 16.

Q. Would you like to sketch in enough so that there are 16 shown here. And how long was this counter at that time?

A. That counter was 33 and one-half feet.

Q. Now, after the agreement was signed on February 4th, the idea was that this counter would be moved south in this direction and Starns' liquor store would go in in this area, is that correct?

A. That is right.

Q. And according to one version of the agreement the counter was to be moved approximately 18 feet south, is that correct?

A. That is right.

Q. And according to the other version of the contract the counter was just to be moved south, is that correct?

(No response.)

Q. In other words, according to Plaintiff's Exhibit 1, which is one of the agreements, the counter was to be moved south, according to Plaintiff's

(Testimony of Vern Humphries.)

Exhibits 2 and 3, it was to be moved approximately 18 feet south?

A. It wasn't the one that was existed. It was only supposed to be moved 18 feet. [185]

Q. I am sorry, I didn't understand you.

A. The first contract didn't have it all in and it didn't exist more than an hour or hour and one-half and the original one stipulated in it that it would be moved 18 feet to the south.

Q. In any event, that is one of the differences between Plaintiff's Exhibit 1, which is the signed contract, and Plaintiff's Exhibit 2, which is the signed contract with handwritten interlineation, and Plaintiff's Exhibit 3, which is the unsigned type-written copy of Exhibit 2, is that correct? That is one of the distinctions between those two versions of the contract?

(No response.)

Q. In one of them the distance approximately 18 feet was specified and in the other one it was not, is that correct?

A. That is correct, I believe. That is what the two papers read here, but the one—the one wasn't in existence long enough. I don't know how it ever got into our file or anything.

Q. Now, Mr. Humphries, you recall the eviction trial in Commissioner's Court about a year ago, didn't you?

A. I wasn't present very much; I don't know very much.

(Testimony of Vern Humphries.)

Q. You testified in it, did you not?

A. No, I didn't, I wasn't never called for that trial. I don't know what went on. I never fully went over the papers. I seen more of them yesterday than I have seen before.

Q. Now, do you know the distance from the north wall of the building to the south wall of the building? [186]

A. No, I couldn't, just more or less, I stated—you can take a figure 24 and one-half feet and 32 feet——

Q. Where do you get that figure of 24 and one-half feet?

A. That was the size of the liquor store.

Q. And then where did you get the 32 feet, is that the new counter size?

A. That is the new counter.

Q. And then the depth of the storeroom behind it?

A. Well, the rest of it, it had a door here and you couldn't have moved any further back on account of this door. I would say there was somewhere, maybe, roughly guessing, 12 feet.

Q. So that the record will be clear, Mr. Humphries, the building no longer exists, is that right?

A. That is right.

Q. It burned down last winter?

A. Yes, sir.

Q. Then, will you tell the jury what the overall plan was after February 4th when the agreement

(Testimony of Vern Humphries.)

was signed? Now, as I understand it, the counter was to be moved south?

A. Can I have another paper and I will draw it.

Q. I thought perhaps you could explain it first from here and then draw it. Would you rather draw it first? A. I would rather draw it.

Q. Mr. Humphries, so that the two sketches will be distinguishable will you mark something on here like the words [187] "after February 4th" or "No. 2" or something so that the jury will later know which is which.

Mr. McCutcheon: If the Court please, in File No. A-5003 there is contained two photographs of the premises which were introduced in a previous trial. I wonder if counsel wishes to use them. I will stipulate if he wishes to use them.

Mr. Cottis: I would like to use this method because it is a good method of showing before and after.

Mr. McCutcheon: I wonder if we might have our regular recess, Your Honor.

The Court: Court will stand in recess until 10 minutes past eleven.

(Short recess.)

The Court: Without objection the record will show all members of the jury present. Counsel may proceed with the examination.

Q. (By Mr. Cottis): Do you want to explain it, Mr. Humphries?

A. Yes, sir, I will explain it. This is the new

(Testimony of Vern Humphries.)

Panhandle or the Panhandle after it was remodeled.

Q. This would be from about what date on?

A. Everything was completed just before March 6th or the morning of March 6th.

Mr. McCutcheon: Will you speak up.

The Witness: This was the way it was remodeled and the [188] way we opened on——

Q. (By Mr. Cottis): And you opened on March 6th?

A. Yes.

Q. All right.

A. This room here is Larry Starns' liquor store and this is the restaurant here where it was moved to. Here was chairs sitting around in the back here. This here is still that little storeroom I had for the reach-in ice box. These here are card tables here—three of them. The men and women's rest rooms is moved over to this side of the building. This here was the men's rest room and this the women's. The store room still remained the same as going through this room here and down into the basement.

This here was the bar which was made about 25 feet longer than the old one. It was 50 or 53 feet long.

Q. That is including the measurement around the curved end?

A. Around the curved end.

And this is the front entrance to both places, between the bar and between the stand. This stand here is a Columbia Air Cargo, which, I think, about

(Testimony of Vern Humphries.)

a week or something like that, I wouldn't say what date, this was added on the building and built in. So this is the Columbia Ar Lines. They are left somewhere around 3 feet passage in here between the bar and the Columbia Air Cargo office. [189]

These are slot machines, pin ball machines. Phonograph sits here and then these were machines that you drop a dime, nickel or quarter in, either one you wanted to, and hoped to get something out of. This was the counter.

This is the outside entrance or the alley entrance to the building right here and they had a stairway leading up here into this room here, which I don't know what was ever built up in there. There was some remodeling up in there but what I don't know because I never was up in there.

Q. That is about it as nearly as you can recall?

A. As near as I can recall. There was still remaining a door leading going into the Annex Building but the lease had expired from the owner of the Annex and they had taken this room away from them. But the key on this side—Mr. Blackard had locked that door then so they couldn't enter in and I don't know whether they had a lock on the other side or not but I do know the door was never torn out of the building.

Q. The door was what?

A. Never taken out.

Q. And, as far as you know it was always closed?

A. As far as I know it was afterwards.



(Testimony of Vern Humphries.)

Q. You never saw it open?

A. Before and while remodeling I seen it open and was in there once or twice.

Q. And as nearly as you can remember what was in there was [190] beer?

A. I know that there was a large amount of beer hauled out of there and whiskey.

Q. Was there anything else in there that you remember?

A. Yes, Mr. Starns' desk was, and he had taken it out and I helped take his big safe upstairs—up these stairs.

Q. Now, Mr. Humphries, on this area here which was, I think, occupied by Columbia Air Cargo, what sort of structure was that? Was it a partition to the ceiling or was it a railing or just what?

A. No, it was something on the order of a counter, I would say, somewhere around 36 inches high, maybe 40.

Q. It did not obstruct the view from the window, did it?

A. It came up to the window is all.

Q. To the bottom of the window frame?

A. That is right, because the window wasn't more than three and one-half feet—the window was up anyway three feet—two and one-half feet from the sidewalk.

Q. Mr. Humphries, you are certain that there were three card tables in the south area?

A. Yes, sir.

(Testimony of Vern Humphries.)

Q. At all times while you were in there?

A. Yes, sir.

Q. Would you describe the card tables?

A. Well, there was a round table excepting they had a "U" [191] sawed out of it, that was for a dealer to sit closer so that he could reach the center of the table.

Q. And each of the tables was fashioned in that manner?

A. They was more or less right in that order, yes.

Q. Now, Mr. Humphries, there is no doubt in your mind that there were three tables there, not two and not four?

A. There wasn't four and there wasn't two.

Q. Three? A. Yes, sir.

Q. And the three remained there?

A. While I was there.

Q. All the time that you were there, is that right? A. That is right.

Q. Now, how long was your counter after this remodeling?

A. Somewhere around 31 and one-half feet, somewhere like that, 32.

Q. Actually it was 32 feet, wasn't it?

A. Something like that, yes.

Q. It had been 33 and one-half feet, is that correct?

A. We sawed off about a foot and one-half of the counter in order for it to clear because they

(Testimony of Vern Humphries.)

still thought they were getting to get a lease up on this side room here and they had to take—I couldn't come and seal up that door, we could only come to the door.

Q. Mr. Humphries, isn't it true that your counter extended [192] a little bit up around the edge of Larry's Liquor Store here?

A. It was impossible for it to—it was built up flush here and a gradual slope, I would say, about a foot in as you went to the back. It didn't come straight out flush here, it came in a little.

Q. What is this line that runs across the south-east corner of Larry's Liquor Store?

A. That was a plan mapped out on the floor and part of the construction of February 4 when we was entering the contract and they went over the plans of how they were building it in order for me to have a good view and so forth, why, Larry's store was to taper off from here in to give a view clear to this window where this window had a clear view of the restaurant sitting here. And then a few days later Mr. Starns said it wasn't enough room of 18 feet so that when we had the discussion of that and then he decided that he couldn't stand to lose this space in here so he built it square.

Q. Now, as the premises were finally remodeled in this manner you still had 16 stools at your counter?

A. Yes, by shortening them up.

Q. That is by shortening the intervals between stools?

A. That is right.

(Testimony of Vern Humphries.)

Q. In other words you now get 16 stools in a 32-foot space where formerly there had been 16 stools in a 33 and one-half foot space, is that right?

A. Yes, upon the designs here we drew then my counter if this here hadn't have been in here and had been off here, only come back here 18 and one-half feet, then my counter would have come like this with four stools here and with coupling them up as we had planned and kept the other foot and one-half on the corner here we would have had the fifth stool—I would have had five more stools at the counter.

Q. Because of the circumference of that curve?

A. Yes, the curve was to be on the same order to match this bar here.

Q. That would have been true if this distance from the north wall to the south wall of Larry's Liquor Store had been 19 and one-half feet?

A. That is right.

Q. Actually what was that distance?

A. 24 and one-half feet.

Q. And then your counter was 32, that total is 56 and one-half feet, is that correct?

A. Something like that.

Q. And then how much space was left back here where the three card tables were?

A. There was, I would say, 12 feet. It could be 15 feet, I never did measure it to be exact.

Q. At the south end of your counter was the door into the building that was known as the Annex? Is that correct? [194]

(Testimony of Vern Humphries.)

A. Yes, the door was—we had to take—it was right up against this here, right in here was the door to the Annex. It came right even, just could get hold of the handle of the door to open it.

Q. The door opened into the Panhandle premises, did it?

A. That is one question I could not—I don't recall whether it did or whether it didn't, but I couldn't swear to it.

Q. Where were the various areas on this remodeled building that you stored your inventories?

A. I stored my inventories—the old one had a partition back in here where some canned goods were kept.

Q. That is on the south central portion of the premises?

A. Well, it was straight across the back.

Q. All the way across the south end?

A. There were cupboards in there and there was also a basement with a room in it. I wouldn't say how big that room were, I would say 6 by 6 or it could be a little bit larger or something, I never did step it off and I used the storeroom downstairs by the furnace.

Q. That downstairs storeroom that was by the furnace was in the southeast corner of the premises?

A. You went down the stairs here and it wasn't a full basement, it was a basement with two partitions in it.

Q. And there was another entrance to that that was known as the coal chute? [195]

(Testimony of Vern Humphries.)

A. No, it had been at one time a coal bin, I think, because it had a little sloping two-foot hole for coal to slide down in there, evidently that was what it was for.

Q. Could you get in and out of it through that means?

A. In and out through the coal chute?

Q. Yes.

A. You would almost have to be a monkey.

Q. You never did that?

A. You would have to get down and dive down in it.

Q. And you never did go in and out of it by that method?

A. No, when you get to be 40 you——

Q. So, you never did actually?

A. No, I never did.

Q. Was anything stored in that basement store-room besides inventory of yours?

A. No. In this little room up in here I think there were four or five cases of whiskey kept and I do believe there was quite often a few cases of beer kept in there but most of the time it was brought in in the morning by Anchorage Cold Storage or one of them on a truck to be delivered and I know Joe brought in his whiskey from the liquor store but he still brought it in by the case lot. I know there were a few cases of whiskey set in there but how much I never did count it or anything of the kind.



(Testimony of Vern Humphries.)

Q. How do you know that there was any down there? [196]

A. I don't know—there was never down into the basement itself, it was inside the little partition here.

Q. And the partitioned room was not in the basement?

A. To go to the stairways right here was a little fenced-off room. I would say it was about a four by five, something like that, on the side of the lavatories, and you went through a door here into this little room and then opened up the door that laid flat on the floor. You opened it up and then went down into the basement.

Q. And it was in that little room that preceded the entrance to the basement that the liquor was?

A. There was a few cases of whiskey in there, yes.

Q. Now, what door was it that you say Joe locked?

A. That was the doors that Joe locked.

Q. That is the door into the entrance way to the basement?

A. We always had it locked. We always had a lock on there and we both had keys but Mr. Blackard taken and got another lock and put on there so that my key was no longer any good.

Q. And what date was that that you testified?

A. That was, I would say that was somewhere around the 15th of April.

(Testimony of Vern Humphries.)

Q. It was before that notice was served on you terminating the contract?

A. It was the same day.

Q. The same day? [197] A. Yes.

Q. Were those card tables the usual kind of green felt covered tables? A. Yes.

Q. What would you estimate the diameter of each of them to be?

A. Oh, gosh, that I wouldn't say, there was room enough for seven chairs—seven chairs equal to these kind of a chair here that would go around the table. I never did measure one of them.

Q. Did you ever use those tables for serving food on?

A. The first two—the first Sunday the Columbia Air Cargo had a special 'plane in and I asked permission from Mr. Blackard to set them at the table. There was six or seven women and six or seven men and I sat two tables of them for them to eat at and the following Sunday I sat up for my wife and three babies and Mr. Blackard said, "We might get grease on there and get the cards greasy and they couldn't sit there" so my family went home to eat.

Q. And where are the men's and ladies' rooms on this remodeled plan?

A. Right here. They are right here in the back.

Q. And then north of the ladies' room was it that storeroom area?

A. Well, yes, it would be right besides the men's

(Testimony of Vern Humphries.)

room. It [198] would be toward the north.

Q. Can you estimate the dimensions of the men's room?

A. We had to build—it was a very, very narrow—I would say it was just about the width of one of these tables here and we had to build half of the men's washroom inside of this room here so that there would be room enough for a man to go into the rest room.

Q. And south of the men's room was there a storeroom? A. South of the men's room?

Q. Uh huh.

A. No, there was a ladies' lavatory there.

Q. Wasn't the ladies' lavatory north of the men's room? A. Pardon?

Q. Wasn't the ladies' lavatory north of the men's room?

A. No, they were both side by side—I could be a little bit mistaken, this could have been the women's and this the men's—no, it couldn't either because the men's room had the sink built half into the storeroom.

Q. Now, then, this was the ladies' room?

A. Yes.

Q. And south of the ladies' room what is this area?

A. That area is a stairs leading upstairs to the Annex and clear outside of it there was a little door in there. I never was in there but I do know there was some beer and whiskey kept in there or

(Testimony of Vern Humphries.)

I was informed he kept some in there. [199]

Q. Would you mark the men's room in and the ladies' room in?

A. They are. This little room out here was a little veneer board put up there to kind of shield the doors when they opened so that the public could not see if there was a lady in the lavatory or something of that sort and that is the reason that was built out here.

Q. Now, what do you estimate the dimensions of this room which is situated in the southwest corner of the building to be?

A. Oh, I would say it would be somewhere around six feet.

Q. Six feet? A. Uh, huh.

Q. And how long?

A. Roughly guessing, never measuring it, I would say somewhere between 12 or 18 feet, I would say 18 feet would come closer to it.

Q. 18 feet in length? A. Yes.

Q. Was it changed at all from the dimensions that it had previous to the remodeling?

A. It had remained the same size.

Q. The size of it had not changed?

A. No.

Q. And you would now estimate that it was about six feet wide and eighteen feet long? [200]

A. Something like that, yes, sir.

Q. Now, as you walked about this little six by 18 foot room, Vern, after you were installed there and were operating the restaurant, what was on

(Testimony of Vern Humphries.)

your left as you walked in from this door?

A. There was a shelf there. On the left? There was a little narrow board put up there for a shelf.

Q. About how wide was the shelving?

A. Oh, I would say about two feet—foot and one-half, something like that.

Q. And on the right what was there?

A. There was on the right—there was an icebox—a reach-in box.

Q. And about how deep was that?

A. I would say it was somewhere in the neighborhood of four feet.

Q. And then how much room was there in between the shelves and the icebox?

A. There was just walking space. You just barely could open the doors up. But you couldn't open the doors up and walk through because there wasn't no room for it.

Q. Then south of the reach-in icebox—is that what you called it?

A. Uh, huh.

Q. South of the reach-in icebox and south of the shelves you [201] had a meat saw and grinder and cube machine, is that right?

A. And a slicing machine.

Q. And a slicing machine?

A. There was a little room that looked something like one of these old fashioned outhouses that was pushed up in there. It had a little door to go in there, just about a two by two, that we lined with stainless steel and we made a stainless steel work room out of there with a cement floor.

(Testimony of Vern Humphries.)

Q. Where was that?

A. It was right back of this little room, because you still had to go through another door because there had been another little part tacked onto there.

Q. Was there an entrance way to the basement there inside the storeroom?

A. No, sir, that coal chute is nailed up. They remodeled that door that went in there and made a longer door and made it about flush liking about six inches flush to the floor. You usually had to step up two and one-half feet to go into a little door to go into this room, so they cut it down and made a bigger, an easier entrance there to it.

Q. That was all nailed up, boarded up, whatever you want to call it, all the time that you were in there, is that correct?

A. They put new boards over that, yes.

Q. That is before March 6th?

A. Before March the 6th. [202]

Q. The meat saw, the grinder, the cube machine and the slicer, those are items that you testified yesterday you obtained in Seattle?

A. Some of it I obtained, one piece or two pieces I got in Seattle.

Q. Which ones?

A. I got the cube machine in Seattle.

Q. And how much was it that you paid for the cube machine?      A. \$318.

Q. Did you get any of those other items in Seattle?



(Testimony of Vern Humphries.)

A. Yes, I got a slicing machine in Seattle.

Q. How much did you pay for that?

A. I paid \$575 for that.

Q. \$575? A. Yes, sir.

Q. Did you get either the meat saw or the grinder in Seattle?

A. No, I didn't. I didn't buy no grinder at all.

Q. Was there a grinder back there?

A. Yes, there was.

Q. Hadn't you bought that from Graves?

A. Yes, sir, I did.

Q. Was there a meat saw back there?

A. There was a real old meat saw back there, yes.

Q. Hadn't you bought that from Graves?

A. No, I evidently didn't, Mr. Blackard claimed that. [203]

Q. Was there anything else back there in that middle working area of yours?

A. No, there weren't.

Q. Now, altogether you had three iceboxes or refrigerators, didn't you? A. Yes, I did.

Q. Where were the other two?

A. Where was the other two? One was up by the stove sitting up in here.

Q. And where was the other one?

A. I let the other one to the Sunshine Market. I didn't have space—no space to set it—so I let it have it. Mr. Phillips picked it up and I don't know whatever became of it. They picked it up after I went outside last spring.

(Testimony of Vern Humphries.)

Q. What kind was that?

A. I can't just right off-hand recall.

Q. Was it a Kelvinator?

A. It was an electric icebox but I really couldn't recall the name of it.

Q. Do you recall where you obtained it?

A. Yes.

Q. Where?

A. Out here on Fifth Avenue at the War Surplus Store.

Q. And do you remember what you paid for it?

A. Yes, sir, I remember what I paid for it. [204]

Q. What was that?           A. \$300.

Q. But you can't remember what kind it was?

A. I think it was a G.W. or G.—something on the icebox.

Q. How big was it?

A. Oh, I would say it was a 7-cubic feet—7 or 8 cubic feet.

Q. Now where did you obtain the one that was back by the store back in this area back of the counter?

A. I bought that from Mr. Graves.

Q. And how much did you pay for that?

A. Well, I bought the whole thing for \$2500.

Q. Where was the icebox that you sent to the Sunshine Market before it went to the Sunshine Market?

A. Where was it? I just had brought it down to the Panhandle. I was going to use it for a meat—a fish icebox.

(Testimony of Vern Humphries.)

Q. Where did you have it at the Panhandle?

A. I had it sitting directly in the back over toward the door here.

Q. And when did you send it over to Sunshine market?

A. I sent it over after the remodeling, after I lost my space.

Q. So when you were operating between March 6th and whenever it was in May that you closed up—May 21st, was it?      A. Yes. [205]

Q. During that period March 26th to May 1st you had that reach-in icebox or refrigerator?

A. Yes.

Q. And then the 7 or 8 cubic foot one that you had bought from War Surplus?

A. No, the one that I bought on the inventory from Mr. Graves.

Q. How big was that one?

A. Oh, that was, I wouldn't—it is pretty hard to estimate. It was a very large one. It had three big doors the same as a big reach-in box. I would say that at least five feet and one-half high or six feet. I would say it was four feet wide and pretty close to 8-feet long. Now, I never measured it. That is as near——

Q. Was it larger or smaller than the one that was back in this little room at the southwest corner?

A. It was the one back in here, was a wooden one but it was more or less on the same size.

(Testimony of Vern Humphries.)

Q. Did you have any other refrigerators or ice-boxes there?      A. No, sir.

Q. Do you recall when you bought that 7 or 8 cubic foot one that you lent to Sunshine Market?

A. Yes, sir.

Q. When?

A. I bought it just about the first of September, 1947.

Q. And you brought it to the Panhandle about February 4th [206] or thereabouts.

A. Somewhere in there, just about, I would say, February 6th or 8th, somewhere along in there.

Mr. Cottis: All right, you can go back on the witness chair, if you want, at this time.

Q. Now, Mr. Humphries, what happened to the bills for most of these things, were they destroyed when your house caught fire?      A. Yes.

Q. Had you paid for most of these things by check?

A. Yes, most of them was paid by check. I think there was the purchase in Seattle—when I was down to Seattle I had Travelers Checks.

Q. When were you in Seattle?

A. I was in Seattle in July.

Q. Of 1947?      A. In 1947.

Q. What did you make the purchases in Seattle at that time for?

A. I was—I thought I had a lease up on the McVickers Building on 4th Avenue and I was going to put in a cafeteria.

(Testimony of Vern Humphries.)

Q. And it turned out you did not have a lease?

A. It turned out when I came back that the rent was raised so I decided not to.

Q. Where did you keep this equipment that you had bought for that purpose between that time and February 4th? [207]

A. I had some at the Alaska Railroad and I had some at my home.

Q. Now, excepting for the purchases which you had made at Seattle and which you state were by travelers check, did you make any other equipment purchases other than by check?

A. I may have.

Q. All right, can you tell me what ones they were?

A. I don't know whether I paid them by check or whether I paid them by all travelers checks. I paid some by cash, I am pretty sure. I think I bought the cube machine—I think I paid for it in cash money.

Q. And where was it that you had acquired the cube machine?

A. At Green-Winter in Seattle.

Q. Now, the slicing machine, where was it that you had bought that?

A. I believe I bought it there at Doreman's Hotel Supply.

Q. Now, do you think you paid for that in cash or by travelers check?

A. I think I paid by travelers check.

(Testimony of Vern Humphries.)

Q. But cash to Green-Winter, you think?

A. Yes.

Q. Where had you purchased the travelers checks?

A. At the First National Bank here in Anchorage.

Q. Now, the icebox that you had purchased at the Surplus Store, you paid for that with a bank check, did you? [208]

A. I don't recall whether it was with a check or whether I paid in cash. I was at the Alaska Railroad at the time and generally carried quite a large amount in my billfold and I wrote a lot of checks. I paid both ways.

Q. That was on September 1st, 1947?

A. Somewhere in there, yes, I wouldn't say exactly the date but it was somewhere right in there.

Q. That is within one week one way or the other?

A. Something of that sort.

Q. And you were at the Alaska Railroad at that time?

A. Yes, sir.

Q. Running the messhall down there?

A. Running the messhall.

Q. Now what did you buy that icebox for—use at the railroad?

A. No, I was planning at that time to operate a cafeteria up on Fourth Avenue.

Q. That is the McVickers Cafeteria in the new McVickers Building?

A. Yes.



(Testimony of Vern Humphries.)

Q. When was it that that fell through?

A. That fell through in the latter part of October, 1947.

Q. Now, you stated, I believe, that Glen Phillips removed that icebox from the Sunshine Market?

A. Yes. [209]

Q. How do you know that?

A. When I returned here in January of 1949 I went up there and asked for the icebox and he says "Well, this place has went through bankruptcy or something; it has just changed hands and that a man by the name of Phillips—Glen Phillips of the Panhandle came and claimed the icebox."

Q. Who was that that you were talking with, do you know?

A. It was the manager that runs the Sunshine Market.

Q. Do you recall his name?

A. No, I don't, don't know that I ever knew his name.

Q. But this was in January of 1949?

A. Yes.

Q. Do you have any other reason for thinking that Phillips took it?      A. No.

Q. Your only knowledge of the matter is what this man told you, is that correct?

A. Right.

Mr. Cottis: May it please the Court, I ask that the jury be instructed to ignore that testimony.

The Court: Motion is denied.

(Testimony of Vern Humphries.)

Q. (By Mr. Cottis): Now, the three doors and the large refrigerator that was behind the counter and the reach-in refrigerator were part of your purchase from Graves, is that correct? [210]

A. That is correct.

Q. And you paid Graves altogether \$2500?

A. That is correct.

Q. Was that payment to Graves made in cash?

A. Yes, it were.

Q. And any receipt for it would have been lost in the fire so far as you know?

A. So far as I know, yes.

Q. Now, Mr. Humphries, yesterday you introduced a statement from your accountant showing how much would have been due Blackard at 6% for a given period of time, do you recall that?

The Court: I beg your pardon, counselor, the statement did not go in evidence.

Mr. Cottis: I am sorry, I thought that it did.

The Court: I think it did not; that is my recollection of it.

Mr. Cottis: I think your Honor is correct.

The Court: We will ask the Clerk to be sure.

Mr. McCutcheon: Mr. Cottis objected and the Court sustained the objection and Mr. Cottis is using this to refresh his recollection.

The Court: It is not in evidence though.

Q. (By Mr. Cottis): Mr. Humphries, yesterday you testified that the amount due Blackard for the month of March was \$203.45? [211]      A. Yes.

(Testimony of Vern Humphries.)

Q. I don't recall your stating yesterday whether you ever paid that amount to Mr. Blackard, did you?

A. No. Mr. Blackard owed me some money and I gave him the statement to be deducted from the amount he owed me for papering and painting the building.

Q. Now, you borrowed some money from Blackard in February, is that right?

A. That is right—\$450.

Q. And did you repay that by check?

A. I repaid that. No, by cash and the note—I borrowed the money from Mr. Campbell. Mr. Campbell went up and borrowed the money from the Bank of Alaska on a note and came back and handed it to me and I paid Mr. Blackard.

Q. In cash?           A. In cash.

Q. Did he give you a receipt or anything?

A. He said he would. We were getting ready to open up and he came to me about twelve o'clock and he says "Vern, I don't have money to open on" and I said "I have got to go to the bank anyway" and I asked Marvin to run up there and get the money, and I give Joe \$450 and I had \$50 left of the \$500 to open the restaurant on right at that time.

Q. Did he give you a receipt?

A. He said later on he would. [212]

Q. Did he ever give you one?

A. He denied it when, of course, there hadn't been a word said about it.

(Testimony of Vern Humphries.)

Q. And then he denied ever receiving it?

A. He said "Try and prove it."

Q. And when you gave Graves \$2500 for that equipment did you get a receipt from Graves?

A. I got a bill of sale. I wouldn't know whether there was a separate slip made out for the money or not but he gave me a bill of sale swearing that the purchase was mine.

Q. That bill of sale was the one that has been marked Plaintiff's Exhibit 4, this document here, is that correct?      A. Yes, it is.

Q. And that same bill of sale, Plaintiff's Exhibit 4, is the one where the second page has been changed, is that correct?

A. Well, there have been more items wrote on there.

Q. More items appear on this middle page than were purchased by you from Graves, is that right?

A. That is right.

Q. And will you tell me again how that happened?

A. I borrowed \$1500 from the Bank of Alaska and they came down and looked over the equipment that I had and then we went back to the Bank and we used this here for the inventory for the mortgage.

Q. Did you inform the Bank of Alaska that some of these items [213] had not been purchased from Graves?

A. It wasn't on there at the time. I brought the man from the bank down and showed him what else I had put into the building

(Testimony of Vern Humphries.)

Q. And he asked you whether you had any bill of sale on the items?

A. Yes, asked if they were free and clear.

Q. So then you added the items here that were not included in the purchase from Graves, is that right?

A. Yes, sir.

Q. And then showed them this bill of sale?

A. Used that bill of sale.

Q. About what date was that that you borrowed the \$1500?

A. Oh, I would say it was the latter part of March. I can't recall the exact date of it right now, I don't, but I am quite sure that *it the* latter part of March.

Q. And it was at that time that those items were added to this bill of sale which is dated February 5th?

A. Yes, February—yes.

Q. Altogether now, you paid Clyde Graves \$2500, is that right?

A. Yes, sir.

Q. And you have no receipt but instead you used this bill of sale for the purpose of a receipt, is that right?

A. When the money—I couldn't get down right at the time. [214] My daughter was very sick and we had the doctor there. I sent Kenneth Havins down with the money and to borrow \$450 from Mr. Blackard. Mr. Blackard made out a little writing on a piece of paper that we owed him \$450 and Kenneth Havins and Joe Blackard give Mr. Clyde Graves the \$2500 and at twelve o'clock I came down

(Testimony of Vern Humphries.)

and went over with Mr. Graves and he signed the bill of sale to me.

Q. At McCutcheon's office? A. Yes, sir.

Q. Then, do I understand that you gave Mr. Havins \$2,050 and that Joe made up the difference of \$450 in that purchase price?

A. That is right. Mr. Havins had \$500 of his own money and we got \$450 from Mr. Blackard and I put in the rest.

Q. But that was not the \$1500 that you had borrowed from the Bank of Alaska, was it?

A. No.

Q. Where had you had that \$1500?

A. I hadn't borrowed that \$1500.

Q. Well, now, straighten me up on my arithmetic, if I am wrong, on the purchase from Graves, Havins put in \$500, right? A. Right.

Q. Blackard put in \$450? A. Right.

Q. Total purchase price was \$2500, right? [215]

A. Right.

Q. That leaves a deficiency of \$1550, correct?

A. That is right.

Q. You gave that \$1550 to Havins, is that right?

A. That is right.

Q. And it was in cash, right?

A. It was in cash.

Q. Now, where had you been holding that \$1550?

A. I had some of it in my personal possession.

Q. And where was the rest of it?

A. I borrowed \$500 right at the time from the



(Testimony of Vern Humphries.)

Sunshine Market and I had the rest in The First National Bank and I went up to The First National Bank on the Fourth day of February about ten o'clock and drew out all of the money that I had in there.

Q. And how much was that?

A. Oh, that was between four and five-hundred dollars, I wouldn't say how much it were but it was somewhere in there.

Q. Then you borrowed \$500 additional from Sunshine Market?

A. Yes, I did, and gave them back—and I paid the Sunshine Market back a few days later because from Hoyt Motors I borrowed a thousand dollars and I paid the Sunshine Market back.

Q. You had between four hundred and five hundred in the First National Bank in a checking account or a savings account?

A. In a checking account.

Q. And you went down and drew that out? [216]

A. That is right.

Q. Why didn't you write a check for it?

A. Well, there was a check I wrote for it in order to draw the money out.

Q. But you didn't draw the check to Graves or to Havins, did you?

A. No, I drew it to myself.

Q. And cashed it?           A. And cashed it.

Q. And then you paid the cash over to Havins?

A. That is right.

(Testimony of Vern Humphries.)

Q. That was between four and five hundred dollars?

A. That is right, plus the rest of the money.

Q. Now, when you borrowed the \$500 from Sunshine Market was that in cash?

A. No, that was by check.

Q. That was a check?

A. That was a Certified Check made on The First National Bank.

Q. And drawn by Sunshine Market to your order?

A. It was made out in my name.

Q. And that was \$500?

A. That was \$500.

Q. Now that makes a total of between \$900 and a thousand dollars that we have accounted for, right? [217]

A. That is right.

Q. Now the balance of the \$1550 that you had to produce, where did you get that?

A. I beg your pardon?

Q. When we started on this arithmetic you had \$1550 that you had to make up to bring the total purchase price to Graves up to \$2500?

A. Yes.

Q. Now we have accounted for between 900 and a thousand dollars of that \$1550?

A. Yes.

Q. Where did you get the rest of it?

A. I and my wife had that much in cash at home.

Q. And you had that in cash at home?

A. Yes, month before that I had gotten quite a large check from the Alaska Railroad.

Q. But you had not deposited it in your account?

(Testimony of Vern Humphries.)

A. Not all of it. I deposited some of it but I had not deposited all of it.

Q. Was it one check from the Alaska Railroad?

A. It was one check.

Q. And you deposited a portion of it in The First National Bank?

A. Yes, somewhere around twelve or thirteen hundred dollars.

Q. And took the rest in cash? [218]

A. And take about seven or eight hundred dollars in cash.

Q. What did you tell me about Hoyt Motors?

A. Hoyt Motors. I borrowed a thousand dollars on my car later on and paid the Sunshine Market back their \$500.

Q. Did you have a bank account in the Bank of Alaska at that time?

A. Right at that time, no.

Q. After you closed your account out at The First National Bank did you open one at the Bank of Alaska?      A. Yes, I did.

Q. Was that a checking account or savings account?      A. Checking account.

Q. So at all times you had a checking account, is that right?

A. Well, there was a lapse that my banking account wasn't entirely closed out at The First National Bank, never, not for the past several years.

Q. So you have always had at least one checking account and occasionally two, is that correct?

(Testimony of Vern Humphries.)

A. Not occasionally two, it was closer to go to the Bank of Alaska when I was in the Panhandle so I up and opened a banking account there and I didn't do no more depositing with The First National Bank.

Q. But you kept the account open?

A. I think somewhere around 40 or 50-cents left in there.

Q. All during that time that we are discussing here you have [219] had at least one checking account, is that correct?      A. Yes.

Q. Did you ever at any time give Clyde Graves any checks?      A. Not myself, no.

Q. Did you ever draw any checks payable to the order of Clyde Graves?

A. Not to my remembrance.

Q. Why, with a checking account at your disposal, were all these matters handled in cash?

A. Just happened to be one of those things, I guess, as near as I could answer, not for or any reason to do it.

The Court: I think we may as well suspend.

Mr. Cottis: Very well.

The Court: You may step down.

The trial will be continued until two o'clock. Ladies and Gentlemen of the Jury, you will remember that you must not discuss the case among yourselves or with others or listen to any conversation about it or form or express an opinion until it is finally submitted to you. Report back at two o'clock.

(Testimony of Vern Humphries.)

Court now stands in recess until 2:00.

(Whereupon, at 12 o'clock, noon, Thursday, June 23, 1949, the court recessed until 2 o'clock the same day.)

Afternoon Session

The Court: Clerk may call the roll of the jury.

(Names of jurors were called and responded to.)

The Clerk: They are all present, your Honor.

The Court: Counsel may proceed with the examination of the witness.

VERN HUMPHRIES

having been called as a witness, having been previously sworn, resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Cottis:

Q. Mr. Humphries, as I understood your testimony this morning, Clyde Graves was paid in cash, is that correct?

A. Nearest to my knowledge, yes.

Q. And the total purchase price was \$2500?

A. Yes.

Q. And it was all paid to him?

A. Yes, sir.

Q. You are sure in your recollection of that, if anything, it couldn't have been \$2400?

(Testimony of Vern Humphries.)

A. It is \$2500.

Q. Now, can you recall about what date you paid Mr. Blackard back the \$450?

A. It is on the 6th day of March, about twelve o'clock.

Q. Was the bar open at that time? [221]

A. We was getting ready to open up. We was supposed to open at twelve but we didn't open until two.

Q. When you say that "We were getting ready to open up" do you mean both the restaurant and the Panhandle Bar?

A. And the liquor store.

Q. And the liquor store. They all opened on March 6th, then? A. That is right.

Q. At about two o'clock in the afternoon?

A. Yes.

Q. And it was about noon that day you repaid Mr. Blackard the \$450? A. Yes.

Q. And that was in cash? A. Yes, sir.

Q. Now, had you borrowed that money from Mr. Campbell? A. I borrowed \$300 of it.

Q. And you had the other \$150?

A. No, sir.

Q. Where did you obtain the other \$150?

A. From Delmar Ingram.

Q. I thought you said this morning that the \$500 was borrowed from a bank by Mr. Campbell to pay off that \$450?

Mr. McCutcheon: Just a moment, is counsel tes-



(Testimony of Vern Humphries.)

tifying or are you asking a question? Counsel said "I thought you said this morning \* \* \*."

The Court: Counsel may ask the question whether he did. [222] Objection is sustained. Counsel is making a statement.

Q. (By Mr. Cottis): Am I mistaken in my belief that you testified this morning that the \$500 was borrowed from a bank to pay back that \$450?

Mr. McCutcheon: Just a moment, I object again—an improper question.

The Court: Overruled.

The Witness: I borrowed \$300 from Mr. Campbell and his nephew—his cousin Delmar Ingram \$250.

Q. (By Mr. Cottis): You borrowed it from Delmar, did you?

A. From Mr. Campbell and Delmar.

Q. You borrowed \$300 from Mr. Campbell alone, is that right?

A. I borrowed \$300 from Mr. Campbell. I borrowed \$250 from Delmar Ingram.

Q. Did all that take place on March 6th?

A. Nearest to my recollection, yes.

Q. So altogether you borrowed \$1550, is that right? A. Yes.

Q. And of that you paid \$450 back to Joe Blackard? A. Yes.

Q. Did you not testify this morning that Mr. Campbell borrowed \$500 from a bank and that from that \$500 Blackard was paid back?

(Testimony of Vern Humphries.)

A. I may have left out Del Ingram. I knew that Mr. Campbell gave a personal note for the \$300 at the Bank of Alaska and that [223] Del Ingram drew out of his savings at The First National Bank \$250.

Q. Now, you didn't get any receipt from Blackard, did you?      A. No, I didn't.

Q. Mr. Humphries, did you not testify that some sort of promissory note had been delivered by you to Blackard at the time that you originally borrowed the money in February?

A. Not to my knowledge right now.

Q. You don't recall any document changing hands when you borrowed the money?

A. There was something; there was an I.O.U. for \$450, something like that was made.

Q. And signed by you?      A. Yes.

Q. Was that returned to you by Blackard when you repaid him this \$450 on March 6th?

A. No.

Q. Did you ask him for it?

A. Later on I did, yes.

Q. Was it ever returned to you?

A. No, it weren't.

Q. I show you a document dated February 5, 1948, purportedly signed by Joe Blackard and Kenneth Havins and Vernon Humphries, witnessed by C. L. Graves and someone else whose name I can't read and ask you whether that is the document you are referring [224] to?

(Testimony of Vern Humphries.)

A. I am sorry, I don't recall this.

Q. That is not the document that you are referring to that changed hands?

A. Not to my recollection, no.

Q. Is that your signature?

A. I can't believe that it is.

Q. How was it that you hurt your finger, Mr. Humphries?

A. I was jacking up my car and I was jacking it up with a bumper jack. The car slipped ahead and my finger was caught between a jack and the trunk-handle in the car and squeezed my finger off.

Mr. Cottis: If Harold Brand is in the Court room I ask that he exclude himself and stay excluded.

The Court: All persons who are witnesses in this case are asked to remain outside the Court room until they are individually called as witnesses.

Q. (By Mr. Cottis): Was Harold Brand with you at that time?      A. Yes, he were.

Q. And was that somewhere near Wasilla?

A. No, I don't think it was near—it was the other side of Palmer.

Q. The other side of Palmer?

A. Yes. [225]

Q. When did that happen?

A. That happened as near as I can remember—I can get the exact date from the doctor—but I believe about the 1st day of April.

(Testimony of Vern Humphries.)

Q. You stopped in Palmer and went to the doctor on the way home, did you not?

A. I did, yes.

Q. And you did not bring with you the moose that you and Brand had just shot, did you?

A. That i——

Mr. McCutcheon: Just a moment, that is an improper question, your Honor, incompetent, irrelevant and immaterial.

The Court: I think there was some testimony about moose meat on direct examination.

Mr. McCutcheon: Read the question back.

(Question read.)

Mr. McCutcheon: That is an unfair question, your Honor, there has not been anything in the world to show he had shot a moose and there hasn't been any testimony on his part to show that he has been guilty of anything. He has denied that and we intend to show differently later in this trial. That is a completely unfair question.

The Court: I think since the subject was opened up that counsel for the defendants has a right to inquire into it.

Mr. McCutcheon: Very well. [226]

The Witness: I was out fishing that night—going fishing.

The Court: Answer the question.

The Witness: I didn't shoot no moose meat, no moose.

(Testimony of Vern Humphries.)

Q. (By Mr. Cottis): Where were you going to fish?  
A. Up at some lake.

Q. And this was about what date?

A. It was about April 1st, somewhere along in there, maybe a little bit before.

Q. Do you recall the name of the lake?

A. No, I don't off-hand.

Q. You had fishing equipment with you, did you?  
A. Yes, I did.

Q. Did you also have guns in the car?

A. Yes, I did.

Q. And Brand had one, too, did he not?

A. No, he didn't.

Q. Just your gun was in the car?

A. I always carry fishing gear and I had a gun with me, yes.

Q. You had a rifle in the car, did you not?

A. I had a shot gun with me.

Q. What doctor did you visit in Palmer on the way back?

A. It was some Army doctor. I do believe—I wouldn't say—I think his name was Long—L-o-n-g. [227]

Q. L-o-n-g?

A. I wouldn't swear to that either. I was there.

Q. What doctor did you visit when you came back to Anchorage?  
A. Dr. O'Malley.

Q. Now, did blood poisoning set in from that incident?

A. Blood poisoning set in in about two weeks—7 to 10 days afterwards.

(Testimony of Vern Humphries.)

Q. And who was it that advised you you should go outside for treatment?

A. There is nobody excepting my wife is a graduate university physiotherapist and bone specialist herself and we agreed up on it ourselves to go outside because my finger was not healing correctly here.

Q. Did you return to Dr. O'Malley when you had decided that blood poisoning had set in?

A. Yes, I did.

Q. And did Dr. O'Malley concur with you that it was blood poisoning?

Mr. McCutcheon: Just a minute, object to it on the grounds it is immaterial, incompetent and irrelevant.

Mr. Cottis: Witness brought up the question yesterday of his finger, Your Honor, and I am trying to——

The Court: It was testified to on direct examination and therefore it may be inquired into by cross-examination and your objection is overruled. [228]

Mr. McCutcheon: Yes, sir.

The Court: Exception is noted.

The Witness: Dr. O'Malley had taken the bandage off of my hand and it was all infected and so forth and ordered me to bed for three or four days and to soak it in salt water.

Q. (By Mr. Cottis): And Doctor O'Malley did not say anything about going outside for treatment?



(Testimony of Vern Humphries.)

A. Very seldom that a doctor will do that, but I made up my own mind that my finger wasn't healing right and my wife——

Q. Dr. O'Malley did not tell you? Answer the question, please?

A. Not to my recollection. He knew I was going outside, though.

Q. Now, why were you going outside?

A. Why I was going outside? Upon the advice of Dr. O'Malley, he advised my taking my oldest daughter outside.

Q. How long prior to this finger crushing had that advice been given her?

A. Regarding what?

Q. To take your oldest daughter outside?

A. Oh, that had been advised to me for, oh, at least four or five months.

Q. Now, yesterday you testified that you took Marvin Campbell here into partnership because you had to go outside to see an outside physician about your blood poisoning, is that correct? [229]

Mr. McCutcheon: Objected to, Your Honor, he made a statement and didn't put it——

The Court: Objection is sustained.

Q. (By Mr. Cottis): Am I correct in recalling——

The Court: Don't state it that way. Ask him if he so testified. What counsel's recollection is is of no consequence to the jury.

Q. (By Mr. Cottis): Did you testify that you recall that you took Marvin Campbell into partner-

(Testimony of Vern Humphries.)

ship because you had to go outside to seek medical aid for your blood poisoned finger?

A. For my finger, yes, and my daughter.

Q. Did you testify yesterday that your daughter had to have medical treatment outside?

A. I didn't testify, no.

Q. But it is a fact that she did have to have medical treatment outside, isn't it? A. Yes.

Q. And you had known that for how long before April? A. Several months.

Q. Did Dr. O'Malley advise you that you had blood poisoning?

A. As near as my recollection, he said I had blood poisoning.

Q. And that was the first part of April? [230]

A. It was somewhere right in there, I couldn't recall the exact date of that. It might have been the middle of April by then, which I believe it were.

Q. When, actually, did you go outside.

A. I went outside the 29th day of May, 1948.

Q. And you took Campbell into partnership when?

A. I believe somewhere around about the 1st of April was when I hurt my finger. He had been working for me all the time before.

Q. Didn't you testify yesterday that the reason you took him into partnership for no payment was that you knew you were going to have to go outside? A. No.

Q. You did not so testify?

(Testimony of Vern Humphries.)

A. Not the way the question has been asked me.

Q. In any event, did you not take Campbell into partnership before any blood poisoning developed?

A. I had taken—I so stated as yesterday in the way it happened—when I mashed my finger off I asked Mr. Campbell to take charge of the restaurant because I was in bed for about a week.

Q. How much money did you owe to Hy's Cab, if any?

A. I don't owe any money to Hy's Cab.

Q. Did Hy's Cab ever make any trips to Palmer or the vicinity of Palmer for you? [231]

A. No.

Q. When your house burned can you recall about what date that was?

A. That was the 1st day of October. I didn't know of it until the 1st of December.

Q. You were outside at the time, is that correct? A. Yes.

Q. Now, who had occupancy of your house at that time? A. Frank Jones.

Q. Under what sort of an arrangement?

A. I rented his house until I returned.

Q. In other words he was paying you rent for your house? A. Yes.

Q. And when did you return?

A. I returned in January, 1949—no, I was up here in December, about the 27th of, 1948.

Q. And stayed for how long?

A. I stayed until the 19th day of January.

(Testimony of Vern Humphries.)

Q. Then did you return again after that?

A. Yes, I did.

Q. About when?

A. I returned then about—I believe about the first part of March, 1949.

Q. Were you here during February, 1949?

A. It was either the latter part of February or the first [232] part of March that I returned.

Q. When you returned in December did you go out to your house to see what damage had been done? A. Yes, I did.

Q. And how much damage had been done?

A. Well, the place had already been estimated of the damage inside of it by a contractor here.

Q. And was the estimate \$2600? A. No.

Q. How much was the estimate?

A. The estimate was \$648.48.

Q. And was the house then repaired?

A. I repaired the house myself.

Q. Do you mean with your own labor?

A. I hired some labor.

Q. Well, it was insured, wasn't it?

Mr. McCutcheon: Just a moment, objected to as incompetent and irrelevant and immaterial.

The Court: Objection is sustained—not relevant whether it had been insured or not.

Q. (By Mr. Cottis): Mr. Humphries, the house, when you returned in December, was it still in the possession of the Jones'? A. No.

Q. Who had possession of it then? [233]

(Testimony of Vern Humphries.)

A. Well, by rights no one did but the key had been turned over to the U. S. Marshal.

Q. Now, had that been done before or after the fire?

A. That had been done after the fire. But it is only hearsay talk, all I know is what I was told when I came back up.

Q. You had your records in that house? Let me put it this way, did your records in that house—were they in a metal filing cabinet?

A. No, not all of them.

Q. Were some of them in trunks? A. No.

Q. Were some of them in a metal filing cabinet?

A. Some of them were, yes.

Q. That had a lock on it? A. Yes.

Q. Was it locked? A. Yes.

Q. Was that filing cabinet burned?

A. No.

Q. Was it injured at all by the fire?

A. I don't know.

Q. Well, didn't you see the filing cabinet again when you returned in December?

A. I found the filing cabinet in December.

Q. Where was it? [234]

A. It was in a Hy's Cab stand.

Q. And had the lock been smashed or anything like that?

A. I wouldn't know. I think they had the lock changed.

Q. What about the rest of your records and documents?

(Testimony of Vern Humphries.)

A. All I know is hearsay talk what happened.

Q. Never mind it. Did you find any documents that were partly burned?

A. I didn't find nothing. They said there was a lot of stuff piled outside of the house in the snow from the fire, but there was too many feet of snow and I never bothered with anything. Some of my furniture and so forth was missing out of the house, too.

Q. Frank Jones had had that house strictly as a tenant, is that right?

A. Yes, so far as I know.

Q. There was no contract of sale to him?

A. My wife was dickering a sale with him.

Q. Had you stayed away from Anchorage longer than you intended?      A. I don't know.

Q. When you left Anchorage in May, 1948, did you intend to return and be a resident of Anchorage?

A. I never had no intentions of living anyplace else.

Q. But right now your residence is in Kansas, is that right?      A. Yes. [235]

Q. And it was in Kansas before you came to Anchorage, is that right?

A. No, that is my wife's home.

Q. Do you owe Frank Jones or Hy's Cabs any sum of money right now?

A. I don't owe him one cent.

Q. Did Hy's Cabs ever bring any moose meat



(Testimony of Vern Humphries.)

down here for you?           A. For me, no.

Q. Were any of your records at all preserved?

A. No.

Q. How did you happen to have the canceled check for \$240 payable to the City of Anchorage?

A. The checks were left with the bookkeeper and at the Bank of Alaska, which we wrote to the Clerk of the Court up here or to the Marshal about Mr. Albert in Kansas and requested for all the papers to be picked up at this house and also requested that the bookkeeper here get all papers from the bank and send them to us. We got a special letter from the United States Marshal here in Anchorage stating that because of the fire down there, they remembered of seeing papers and a bunch of stuff, but later they returned to get them for me and ship them back east and they said the papers were all destroyed.

Q. And how does it happen that that check was not destroyed?

A. The checks—that check were not in the house, it was in the Bank of Alaska. [236]

Q. Were all your cancelled checks in the Bank of Alaska?

A. All of the business that was being done at the Panhandle was in there—of the Bank of Alaska.

Q. So any bills that were paid for by check by the business operated by you and Mr. Campbell would be evidenced by cancelled checks that were at the Bank of Alaska, is that correct?

(Testimony of Vern Humphries.)

A. Yes, we have those checks.

Q. Now, do you have a check showing the repayment to Blackard of \$450?      A. No, I don't.

Q. And all the equipment was bought by cash, is that correct?      A. By cash and by check.

Q. Well, you have cancelled checks for any equipment items?

A. I would have to go through them and see. I know there is one or two that I have—small ones.

Q. For example, did you buy a dishwasher from Northern Supply Company?

A. Yes, I did.

Q. And what was the total purchase price?

A. I believe, as near as I can remember, was \$255.

Q. And how much did you pay on it?

A. I paid either \$100 or \$150, somewhere around in there. I believe \$150.

Q. That had been paid by check?

A. By check. [237]

Q. And that check you couldn't produce?

A. Yes, I can.

Q. Were there any items in your inventory—your stocks of foods and so forth—that were not paid by check?

A. Yes, there were. I paid by cash for several items.

Q. Can you recall what items you paid for with cash?

(Testimony of Vern Humphries.)

A. I don't know. I paid Pay 'n Take It Grocery Store, I know I paid them every day in cash—small bills that we charged there.

Q. In connection with the business operation?

A. Yes, and also paid them by check too.

Q. Isn't Pay 'n Take It a retail establishment?

A. Yes, it is.

Q. Did you buy your food supplies there for the restaurant?

A. Just a small proportion.

Q. Where did you buy most of your food supplies?

A. Most of them was bought from the Grocery Supply.

Q. And did you pay Grocery Supply with cash or by check?

A. I paid them always by check when I paid them.

Q. So you would have all checks showing how much you paid Grocery Supply for food?

A. That I paid and I also still owe them a bill.

Q. How much do you still owe them?

A. I owe them somewhere around \$3,000.

Q. Is that all from foods that you used at the Panhandle? [238]

A. I don't quite get you clearly on that.

Q. Was that approximate amount of \$3,000 incurred between March 6, 1948, and May 21, 1948?

A. That was about the last bill was about somewhere starting around the 10th of April until I closed out. But I paid them cash up until the 1st of April.

(Testimony of Vern Humphries.)

Q. Did you not just testify that you always paid that particular concern with checks?

A. What concern

Q. Grocery Supply.           A. Yes.

Q. Well, did you not also just testify that you paid them with cash until the first part of April?

A. Isn't a check cash too, it is money, that is the way I mean it. I paid them by check.

Q. When you have talked about cash, then, you have included check in that term?

A. Grocery Supply, yes.

Q. Well, now, when you state that you bought equipment items with cash, do you mean that you bought them with checks?

A. I paid cash with it. Some of it by check, some by cash, and some by travelers checks, but it was all paid for.

Q. Well, now, using the word "cash" as distinguished from checks, travelers checks, bank drafts or anything in that nature, did you pay Clyde Graves in cash or by check? [239]

A. In cash.

Q. And did you repay Blackard his \$450 in cash or by check?           A. In cash.

Q. Did you at any time give Clyde Graves any check or bank draft?

A. Not to my knowledge.

Q. When you purchased Mr. Havins' interest in the restaurant business did you pay him in cash or by check?

(Testimony of Vern Humphries.)

A. Mr. Jones, I believe, paid him.

Q. Do you know whether it was in cash or by check?

A. I don't know; I don't remember.

Q. Was a bulk sales affidavit delivered to you or to Mr. Jones, if you know, at that time?

A. Well, what kind — what sale, what does it cover—I don't quite——?

Q. Did any documents change hands at the time that Jones purchased Havins' interest?

A. It was supposed to have been done in Stan McCutcheon's office that Richard Jones bought out Kenneth Havins, but as far as my knowledge, I don't know whether I ever seen the paper or not.

Q. Did you testify yesterday that Havins had to leave because of Joe Blackard did not approve of him?

A. That was Joe Blackard's statement to me.

Q. And Jones had to leave because Blackard did not approve [240] of him?

A. That was what Joe Blackard demanded.

Q. Did you testify that there was friction between Blackard and Jones?

A. Yes, there were at that time, later they became close friends although I never did know why.

Q. Was there friction between Havins and Blackard

A. I don't believe so.

Q. When Havins sold out to Jones did Blackard consent to the sale?

A. Yes, he did.

Q. Orally or in writing?

A. Orally.

(Testimony of Vern Humphries.)

Q. And when Jones sold out to you did Blackard consent to the sale?

A. Yes, he told me to get rid of Jones.

Q. When you sold or gave a half interest to Marvin Campbell did Blackard consent to that?

A. Yes, Joe Blackard—I had my finger mashed and he came down to my house to see me and I told him at that time and he didn't make no comments one way or another on it so I guess it was all right, nothing was ever said.

Q. In connection with the two agreements dated February 4th, 1948, and signed by you, Havins and Blackard, did you testify yesterday that those agreements were changed later by oral [241] agreements among you?

A. We agreed, it wasn't anything in the contract being changed only that we agreed upon certain terms, that they would stand certain bills if they got an extra four and one-half feet. That is just about—I don't know what you would call it—but that is what had taken place.

Q. After those agreements of February 4th had been signed, did construction for everybody proceed right away?

A. Will you speak that again, I didn't quite get it?

Q. After those agreements of February 4th, 1946, had been signed, did construction for everybody proceed right away?

A. What agreements do you refer to?



(Testimony of Vern Humphries.)

Q. Plaintiff's Exhibits 1, 2 and 3, the agreements between you, Havins and Blackard?

A. Yes, after the contract they started in. They had closed down while the building was being remodeled.

Q. And that went right ahead from that date forward?

A. Why, I guess so, yes.

Q. You were around at the time, weren't you?

A. Yes, I was there.

Q. That is, beginning shortly within a day or two after February 4th the remodeling progressed right ahead?

A. Yes.

Q. And it was March 6th before it was completed enough so that you could open? [242]

A. Yes.

Q. During that period from February 4th to March 6th were there any stalemates or pauses in the remodeling or did it go ahead continuously?

A. Any stalemate.

Q. Did the remodeling halt anytime during that period? Did it stop?

A. It stopped for a while, yes.

Q. For about how long.

A. Oh, it stopped for several hours.

Q. There were no long drawn-out work stoppages or anything of that nature?

A. No, they weren't. You see the only work that we stopped was to Larry Starns' liquor store and a couple of men that were going to move my counter further back they only stopped—I have an idea three or four or five men.

(Testimony of Vern Humphries.)

Q. You were around during that remodeling period?      A. I was there every day.

Q. Joe was around during that period?

A. Yes.

Q. Was Starns around during that period?

A. Yes, Starns was, went outside for three or four days or something like that and in the meantime I don't recall, but I do know that he made a short trip somewhere, but he was around there every day too. [243]

Q. Was Phillips around during that period?

A. Yes, Phillips was in and out.

Q. Now, while the remodeling was going on did you and Starns and Blackard have conversations from time to time about it?

A. Not only but about one time.

Q. And when was that and what was that conversation?

A. Well, that was when Mr. Starns decided he wanted more space.

Q. And will you state what you can recall of that conversation?

A. Well, I refused to let them take the space one morning about nine o'clock in February. I say it was somewhere around the middle of February.

Q. Whom did you refuse — workmen or Mr. Starns?      A. Mr. Starns and Mr. Blackard.

Q. And then was there a discussion about the matter?      A. Yes, there were.

Q. And will you state what you can recall of that?

(Testimony of Vern Humphries.)

A. Well, I consulted with my attorney, Stanley McCutcheon, and we discussed it then with Larry Starns and Joe Blackard. I think in the presence was Larry Starns, Joe Blackard, Marvin Campbell and myself and I believe that Glen Phillips was around in there.

Q. And Mr. McCutcheon?

A. Mr. McCutcheon only was there only for just a few minutes [244] and left out.

Q. All right, now, what was the discussion, what did you decide at that conference?

A. Mr. Starns wanted four and one-half more feet for his liquor store, which would call for removing all the plumbing and the fixtures further back. It would run into a lot more money. I would lose five stools off the counter and I refused doing so. Then Mr. Starns said that he would take—turned around and said “Damn it, we will take and stand the cost of the moving extra of that if you will allow us to remove the stools. I need this space.” Our discussion was made on the \$3,000 bond and Larry Starns says “I will go good for it” and Joe said “That is good enough for me and we will forget it” and the work went right on remodeling the liquor store.

Q. Now, will you relate who was present at that conversation, again?

A. Larry Starns, Joe Blackard, Marvin Campbell, myself, Vernon Humphries, and I know—I believe that Stan McCutcheon walked over there with me for a period of a few minutes.

(Testimony of Vern Humphries.)

Q. Was there anybody else present?

A. Not to my knowledge. I demanded from a couple of carpenters, which I don't remember their names, I told them to leave my counter alone until such time as I agreed upon it to be moved.

Q. Now, was that the only discussion you ever had about that \$3,000 bond? [245]

A. With Joe Blackard? Yes, it were. It was a settlement of the bond anyway.

Q. About what date was that discussion, Mr. Humphries?

A. I say it was somewhere around the middle of February or it could have been a little bit later, I don't remember the exact date. It might have been near the first of March, but I know it was along in there somewhere.

Q. I am going to read you a paragraph from an affidavit signed by Vernon Humphries and sworn to before S. M. McCutcheon on May 17, 1948, which is part of the Court's files.

Mr. McCutcheon: I object to Mr. Cottis reading an affidavit. Despite the fact that it is in the Court files it is not in evidence in this case, Your Honor, and I submit that it is improper.

The Court: The paper should be submitted to the witness before he is interrogated about it.

Mr. McCutcheon: If the Court please, I would like to ask Mr. Cottis if he is going to endeavor to impeach the witness with this document?

Mr. Cottis: Yes, indeed.

(Testimony of Vern Humphries.)

Mr. McCutcheon: Then I submit it should be shown to the witness first.

The Court: I have just so ruled.

Q. (By Mr. Cottis): Mr. Humphries, I show you what purports to be an affidavit [246] sworn to May 17, 1949, by you, which is on file in this case——

Mr. McCutcheon: I object to Mr. Cottis testifying as to what this document is, Your Honor. It is not the proper way to identify it. Mr. Cottis isn't under oath.

The Court: Submit the document to the witness and ask him.

Q. (By Mr. Cottis): Will you describe what this is?

A. I can see better without the light, Your Honor.

Mr. McCutcheon: If Mr. Cottis is about to impeach him, I object. I submit to the Court that the proper procedure is to ask him if he did or did not say at the time and place and in the persons' presence.

The Court: Counsel said a moment ago that the document should be presented to him. If it is his affidavit then counsel can interrogate about it.

Q. (By Mr. Cottis): Did you sign this affidavit, Mr. Humphries?

Mr. McCutcheon: Object to the question, improper and incompetent.

The Court: Overruled.

(Testimony of Vern Humphries.)

Q. (By Mr. Cottis): Is this your signature, Mr. Humphries?      A. I believe it is, but——

The Court: Read it. You may read it all.

Q. (By Mr. Cottis): Will you go ahead and read it and take your time?

A. Yes, sir. I believe there was a slight error made in this, just an error of print.

The Court: Just continue to read it, don't make any statements until you are asked about it. Counsel may proceed.

Q. (By Mr. Cottis): Is it your signature?

A. Yes, it is.

Q. What was the slight error that you wanted to tell about?

Mr. McCutcheon: Objected to as being incompetent, irrelevant, improper.

The Court: Overruled.

The Witness: I just don't like the way it is worded. I don't quite get the name of Harold Brand.

Q. (By Mr. Cottis): I don't quite understand what you mean by you don't get the name Harold Brand?

Mr. McCutcheon: Now, I submit, Your Honor, that is not a question and I object to counsel testifying. -

The Court: Counsel may restate the question.

Q. (By Mr. Cottis): Will you explain what you mean when you say "I don't quite get Harold Brand?"



(Testimony of Vern Humphries.)

Mr. McCutcheon: If the Court please, may I renew my objection on the ground it is an improper method of endeavoring [248] to impeach the witness. I don't believe counsel can impeach the witness with this affidavit, but I object to the manner in which he is getting it to the jury.

The Court: Overruled. You may answer.

Mr. Cottis: Read that.

(Question read.)

The Witness: Oh, in the presence of Harold Brand, I get it.

Q. (By Mr. Cottis): Is there anything else about this affidavit that you would like to explain?

Mr. McCutcheon: Objected to as incompetent and improper, irrelevant.

The Court: Objection is sustained.

Q. (By Mr. Cottis): You do recall signing this affidavit, do you?           A. Yes.

The Court: Court will stand in recess until five minutes past three.

(Short recess.)

The Court: Without objection the record will show all members of the jury present. Counsel may proceed with the examination.

Q. (By Mr. Cottis): Mr. Humphries, when was it that you claimed Blackard [249] closed the storeroom?

A. It was somewhere around about the middle of April.

(Testimony of Vern Humphries.)

Q. Was it before or after the termination notice was served on you?      A. It was the same day.

Q. That he closed the storeroom up?

A. Yes.

Q. And you are sure of that?

A. To the best of my knowledge.

Q. Could it have been April 18th?

A. There could be a day there more or less. I couldn't swear to the exact day but to my memory it seems as though it were on the 15th.

Q. Could it have been as long after as April 20th?      A. It was in April anyway.

Q. You are not sure whether it was before or after the notice was served on you?

A. It was somewhere right in there, to my memory, the best that I think I know it was the same day.

Q. We are talking about the closing of the storeroom now?      A. Yes.

Q. In your Complaint, Mr. Humphries, you allege that the defendants interfered with the delivery of fuel oil to you, when would that have been?

A. That was somewhere in the month of April, too. [250]

Q. Do you recall now whether that was before or after the notice was served on you?

A. I believe the fuel oil—it was somewhere right around in there, I think it was right afterwards.

Q. When was it that they started locking the doors to the premises when the bar closed?

(Testimony of Vern Humphries.)

A. That was in February.

Q. That was in February?

A. Or, I mean in April.

Q. And was that before or after the notice was served on you?

A. The locks of the doors was changed, I believe, the day that the notice was served.

Q. Did the defendants ever shut off the cooking range?      A. Pardon?

Q. Did the defendants ever shut off your cooking range?

A. According to a complaint — a story I was told; I wasn't there to see it done.

Q. When were you told that?

A. I was told that on the night of the 15th of April or either 15th or 16th of April, I am quite sure it was the 15th of April, it was somewhere in there though. The exact date I can't just recall, but I believe that is it.

Q. What date did you say the fuel oil delivery was interfered with?

A. About sometime in the middle of the month of April, somewhere [251] along in there.

Q. Could it have been as late as May?

A. I couldn't quite swear to it that the oil fuel was denied. I remember that I was told, and that was only hearsay talk, too, Joe didn't tell me himself.

Q. Who did, Eisenhower?

(Testimony of Vern Humphries.)

A. I don't recall just who it was now, to tell you the truth about it.

Q. How did you find out that the storeroom was closed?

A. I—because I seen a new lock on the door.

Q. Did Blackard tell you that he had changed the lock?      A. Yes, he did.

Q. And about what date do you think that was?

A. That was the middle of April.

Q. You don't recall whether it was before or after that notice was served on you?

A. It was right in that time.

Q. Is this your signature?      A. Yes, it is.

Q. Will you tell me what this document is?

Mr. McCutcheon: Is this for the purpose of impeaching the witness, Mr. Cottis?

Mr. Cottis: Yes.

Mr. McCutcheon: I submit, Your Honor, that the question is improper, incompetent, the witness doesn't have to testify [252] as to what Mr. Cottis shows him.

The Court: Overruled. Does counsel wish to proceed further?

Mr. Cottis: I didn't hear the answer to the question.

The Court: What was your answer to the question?

The Witness: Will you speak it again?

(Question read.)

The Witness: Yes, it is a restraining order.

(Testimony of Vern Humphries.)

Q. (By Mr. Cottis): Do you want to change any of your testimony regarding dates that you just gave? A. Not that I know of.

Q. Have you read that doceument all the way through?

A. I read the first two pages, yes.

Q. Do you recall signing that document?

A. Yes, I do.

Q. When was it signed?

A. I have an idea the same day it was filed. I am not for sure. I didn't file it.

Q. What was the filing date?

A. The filing date is May 7, 1948.

Q. And that document was sworn to by you?

A. Yes.

The Court: Has counsel any other questions?

Mr. Cottis: Yes, Your Honor. [253]

The Court: Then I think you ought to proceed with them, then.

Q. (By Mr. Cottis): Are the dates shown on that document incorrect?

A. What date are you referring to?

Q. The date of May 5th?

A. It is probably correct, I signed it.

Q. It is not consistent with your recent testimony, is it?

The Court: Counsel shouldn't make such remarks in the presence of the jury.

Mr. Cottis: Sorry, Your Honor.

Q. Mr. Humphries, during the period between

(Testimony of Vern Humphries.)

April—February 4th and March 6th, you stated that Mr. Starns was not there for a few days——

Mr. McCutcheon: Objected to.

Q. ——is that correct?

Mr. McCutcheon: Excuse me.

A. I didn't quite answer it that way. I said I was — I believed that he was out for a short time, I couldn't swear that he were because I didn't see him leave.

Q. (By Mr. Cottis): How many days do you think he was absent between February 4th and March 6th? A. I couldn't swear to that.

Q. Can you give any estimate at all? [254]

A. No, I wouldn't because it would be only guess work.

Q. When was it, to the best of your recollection, that you had the conversation about waiving the bond?

A. It was somewhere in February or around the first of March, it was at the time of the building of the liquor store, that I know for sure, but the exact date on it I don't know for sure.

Q. You do know it was before the opening on March 6th, is that correct?

A. Yes, it was before March the 6th.

Q. Did you testify that it was at least a couple of weeks after February the 4th, the date of the agreement? A. To my knowledge, yes.

Q. Were you in Anchorage, in February, 1949?



(Testimony of Vern Humphries.)

A. In February, 1949, yes, I were.

Q. Can you recall how long you were here during that period?

A. Oh, I was here about ten days.

Q. And can you recall the dates?

A. The date that I came here?

Q. And left?

A. No, to be truthful I can't, there was nothing assuring me of anything when I came here and during that time I was in the Court room here but I don't even recall the date I was in the Court room here.

Q. You stayed at the Westward Hotel, did you not?      A. Yes, I did. [255]

Q. Assuming that the Westward Hotel records indicate that you and Marvin Campbell checked out at February 16th at 7:00 o'clock in the evening, can you tell me where you were on February 16th?

A. I don't recall of checking out at 6 o'clock in the evening. I don't recall the incident.

Q. Can you recall the day where you were after you checked out?

A. When I left here going back to the States, whether it was in February or the 1st of March, I had gone to the Northwest Air Lines.

Q. When you checked out of the Westward did you go directly back to the States?

A. Yes, I did.

Q. Did you visit your house when you were here in February?

(Testimony of Vern Humphries.)

A. I was only out to the back door.

Q. During the remodeling of the Panhandle in February of 1948, did you see Starns around just about every day?

A. I seen him around quite often. I might not have seen him every day but I seen him quite often. I wasn't keeping no record of him.

Q. Did you see him more than 15 times between February 4th and March 6th?

A. Sometimes I seen him a dozen times in a day but sometimes I might have went all day and never seen him, I couldn't swear to it. [256]

Q. Did you see him any more than 15 days during that period?

A. It would only be guess work, I couldn't swear to it because I have no way of proving it.

Q. Do you think you did?

A. To my knowledge, I think I did, but I wouldn't say for sure.

Q. Was Harold Brand present at the conversation when the bond provision of the contract was supposedly waived?

A. That I don't just quite recall, he was there, I think, at one time.

Q. Did Harold Brand work for you at that time?

A. At what date?

Q. Whenever the bond provision was supposedly waived?

A. On one occasion he were.

Q. Was he in your employ at the date of waiving that bond provision?

A. Yes, he were, I believe.

(Testimony of Vern Humphries.)

Q. Did you ever pay Joe any of the monthly charges provided for in that agreement?

A. What kind of charges?

Q. The agreement provides for 6% or \$200 a month, whichever is greater. Did you ever make any of those payments to Joe?

A. I gave him a statement of it for it to be deducted from the amount that he owed me.

Q. And how much did he owe you? [257]

A. He owed me somewhere around \$450 — between \$400 and \$500. \$208 for painters and helpers it was \$300 and some dollars and then paper was charged to me which I hadn't paid which neither had Joe paid but it was being charged to the cafe there and I presented him with that amount too.

Q. How much did all that total as nearly as you can remember?

A. I think the whole thing totaled somewhere around six or seven hundred dollars. I haven't seen the bills lately to really know the exact figure on it, but it was somewhere in there.

Q. Will you go through those items again, Mr. Humphries?

A. The labor was somewhere around—the painters was \$208 and then there could be some few cents. I am not giving it for absolutely a correct figure but it was right at that figure and somewhere around \$100 of helpers and somewhere around \$70 for mirrors, and then there was somewhere around \$250 or \$300 for paper and paint and

(Testimony of Vern Humphries.)

brushes and miscellaneous things that was bought at a paint store for the remodeling of the Panhandle which was charged to me.

Q. Did you pay that sum?

A. No, I didn't.

Q. Now, who charged it to you, do you know?

A. Yes, Paddock Paint Company, it is right up Fourth Avenue here up about two blocks from here on the left-hand side going up. I believe that is Haddock or some such name.

Q. Was that all that Joe owed you? [258]

A. Yes, that was all that Joe owed me.

Q. Did you not testify yesterday that you lent Joe some money so that he could open the bar?

A. No, I didn't state that.

Q. This six or seven hundred dollars that you claim Joe owed you, that was all incurred during the period of construction, was it, or the period of remodeling?

A. Yes, it were.

Q. Why didn't it show on Gottschaulk's statement when he computes the amount due to you from Joe?

A. You will have to ask the bookkeeper that, I couldn't explain it.

Q. Well, your gross receipts of May of 1948 were over \$3,000?

A. Yes, I have seen it; it is \$3,000 and some odd—one hundred or two hundred or three hundred, I believe, and some odd dollars, and some cents.

Q. During May?

A. During May.

(Testimony of Vern Humphries.)

Q. Do you recall what it was during April?

A. I couldn't be exact but I believe during April the account ran up there, I wouldn't say unless I had the figures to look at.

Q. Do you think it was more than \$3,000?

A. Yes, I think it were. [259]

Q. Now, Gottschaulk's statements that you refreshed your recollection with yesterday, can you tell me again what your receipts were for March? That was what that statement showed, wasn't it?

A. Yes, that was \$3,300 and some odd dollars and cents, I wouldn't say just the exact figure.

Q. So during each of those three months your receipts were in the neighborhood of \$3,000 or more?

A. I believe so. I would have to take and look at the books. I can't remember exactly day to day what we were doing.

Q. Why did your receipts hold up if Joe was injuring you so badly?

A. In May it fell way down, but just how much—I know our business was way off but I wouldn't say the total amount for that many days. It has been several months past without thinking of it.

Q. Did you not just testify that during May your receipts exceeded \$3,000?

A. I said I didn't think for sure.

Q. And that during April they exceeded \$3,000?

A. I wouldn't swear to it, if I had to guess, and that is only guessing.

(Testimony of Vern Humphries.)

Q. During March we know what the receipts were, don't we?      A. Yes.

Q. Is your testimony now that the receipts might have been [260] lower than \$3,000 in May?

A. As I said before, without seeing it I would have to take and see it because I couldn't answer it to be truthful.

Q. You have something somewhere that shows those receipts?      A. I don't know.

Q. Do you have something somewhere that show the receipts for April?      A. I don't know.

Q. How does it happen that you have something showing the receipts for March?

A. Because we had written to Mr. Gottschaulk to send for our papers and this was one of them with these bank things that was in it and that is the only reason that I had that.

Q. And the April and May receipts did not accompany this — the April and May statements did not accompany this March?

A. They did not arrive with the checks and a few things that were sent back.

Q. Have you ever acquired of Mr. Gottschaulk where the May and April statements were?

A. He stated that he had sent everything that he had in his presence and I believe that I had already had some of them at my house. Now, I wouldn't make a statement of knowing the fact that I did because I can't recall at the present.

Q. To make it clear to the jury is it true that



(Testimony of Vern Humphries.)

despite the service on you of the termination notice on April 15th you [261] stayed in possession there until May 21st?           A. Yes.

Q. And once again, because I don't think — I don't recall your clear answer to it, did you ever actually give Joe Blackard any money for your concession there?

A. Not in cash money, only had it deducted from what he owed me up on remodeling.

Q. You never did give him any cash money or checks?

A. For the restaurant receipts? No, I did not.

Q. Now, do you recall the four provisions that that termination of your contract was based upon?

A. I would have to see it to be exact upon all of them.

Q. Was one of them your failure to furnish a \$3,000 bond?           A. Yes.

Q. And your testimony is that provision of the contract was waived, is that correct?           A. Yes.

Q. Was another one of the reasons for terminating the contract your possession of illegal moose meat?           A. So he claimed.

Q. Now, regarding that moose meat, did you testify that you were not guilty of the charge but that you pleaded guilty in any event?

A. Yes.

Q. Was Mr. McCutcheon with you when you entered the plea of [262] guilty?           A. Yes.

Q. How much was your fine?

(Testimony of Vern Humphries.)

A. I believe it was \$300.

Q. Do you want to change your testimony at all?

A. I believe with court costs and my attorney's fees the whole thing was \$300. I made out one check which I have the check for yet.

Q. Now, was another ground for that termination your failure to pay the monthly charges for your concession?

A. I believe that is what is stated in it.

Q. And as to that is it now your testimony that you paid those charges by off-setting them against Joe's indebtedness to you?

A. That is the way it should have been done.

Q. Is that the way it was done? A. No.

Q. How was it done?

A. Joe just ignored the amount that he owed me.

Q. And did you ignore the amount that you owed him for monthly charges?

A. I presented him with the statement for it to be deducted and stated and asked for that way it be done.

Q. Who made up the statement for you?

A. My bookkeeper. [263]

Q. Who is that?

A. Mr. Harry Gottschaulk.

Q. Now, was another ground set forth in the termination notice the claim that you had not been paying your creditors?

A. I can't recall without seeing it — without

(Testimony of Vern Humphries.)

seeing that notice, I know there are several things on there but just without having it to refresh my memory on it I couldn't tell you exactly.

Q. Can you recall now how much you owed to business creditors on April 15th, 1948?

A. Well, I owed for groceries of around \$3,000, a little better.

Q. Did you owe anything else?

A. On what date?

Q. April 15, 1948?

A. Oh, I didn't even owe on April 15th, I didn't even owe \$3,000. On April 1st I didn't owe anyone and as my restaurant went along I charged other things and several things I paid. I don't know. If you recall any one item maybe I can answer it, but maybe guessing, it would be just guess work.

Q. Well, April 1st, you don't recall that you owed any bills, is that correct?

A. On April 1st, yes, I did owe a few bills, but I paid up, I believe the major things.

Q. Did you owe Bliss Construction Company any money? [264]

A. No.

Q. Did Bliss Construction Company ever claim to you that you owed them any money?

A. No.

Q. Did Bliss Construction Company do any work for you in the remodeling of the restaurant?

A. I believe that Bliss Construction did all the remodeling of the Panhandle and also moved my counter back and fixed it but they never presented

(Testimony of Vern Humphries.)

me with a bill to my knowledge. The understanding was that moving it further back and giving them space that Harry Starns and Joe Blackard were going to stand the plumbing bill and that is all I know about it. I know Mr. Campbell paid a large sum but what it were I couldn't say.

Q. Did Bliss Construction Company do the plumbing?

A. I couldn't swear to that, there was plumbers there but I don't even know their names.

Q. But so far as you know you did not owe Bliss Construction Company something more than \$3,000?

A. I never asked Bliss Construction Company to enter into a contract with me.

Q. Did Bliss Construction Company do the moving of the restaurant equipment to the south?

A. Yes, they did.

Q. In other words, Mr. Humphries, you now testify that Blackard waived the bond provision and that in consideration of that [265] waiving the bond provision you gave up your right to have a counter 33 feet long?

A. With an "L" shape of another 8 feet.

Q. It would have been 33 feet instead of 32 feet, is that correct?

A. It would have been 33 feet—33 and one-half feet one way and with the circle "L" on it would have been another 8 feet so that it would have been 41 feet in measuring the full length of the whole thing in diameter.

(Testimony of Vern Humphries.)

Q. Did you ever purchase any more than the 16 stools that came with the restaurant?

A. No, I did not. I had wrote for prices and got a catalog up on it but I hadn't placed an order for them.

Q. You had, did you not, a good number of catalogs in any event from your railroad operations?

A. Not to my recollection, I didn't have any.

Q. Mr. Humphries, the refrigerator that went to Sunshine Market, could it have been a Kelvinator refrigerator?

A. No, it was an electric, it was a straight-out electric refrigerator. I think there was a G. W. on it.

Q. It could not have been a brand of refrigerator known as Kelvinator, is that what you are telling me?

A. No, just what is a Kelvinator? Do you mean that is just the name?

Q. Yes. [266]

A. All I ever seen on the icebox, as near as I can recall, is a G. W. on the door.

Q. Mr. Humphries, on February 4, 1948 did you testify that the contract between you and Havins on the one hand and Blackard on the other was originally drafted by our office?

A. There was a contract first made out in your office.

Q. And did you testify that you left our office at about five o'clock in the afternoon?

(Testimony of Vern Humphries.)

A. Yes.

Q. And did you testify that you then went to Mr. McCutcheon's office and had changes made in the contract?      A. Yes.

Q. And after the changes had been made and the contract was typed did you all sign it at Mr. McCutcheon's office?      A. Yes.

Q. And then did you go across the street to the Panhandle and discuss it further?      A. Yes.

Q. And then did you return to Mr. McCutcheon's office?      A. Yes.

Q. And did you testify that you called Mr. McCutcheon down to his office from his home to retype the contract?

A. Yes, nearest of my remembering I did.

Q. And then you all signed it again on that night in the revised form, is that right? [267]

A. Yes.

Q. Now, Mr. Humphries, can you explain why it is that you were so careful to have a contract in writing on that day that you called Mr. McCutcheon down at night when as to the waiver of the bond provision nothing was ever put into writing?

A. I don't quite follow you, I don't know that there was any rush or anything, but I was buying the equipment and before I would buy the equipment I wanted to have a contract, what I was to get in that building, and it was Mr. Blackard, I believe, or it could have been me, one or the other, was seeing to it that it got signed that night. I



(Testimony of Vern Humphries.)

wouldn't swear one way or another on it but I know we had it signed up that night.

Q. And it is your best recollection that you had Mr. McCutcheon come down to his office that night to retype it?           A. Yes.

Q. Now, can you recall, Mr. Humphries, in what respect that second contract differed from the first contract that had been typed at Mr. McCutcheon's office on that night?

A. Well, specifically stated, the contract is here, I can just by memory. I was left out of there the amount of space that I was supposed to, and I guess that is just as near, without reading the contract out, is just about as near as I know.

The Court: Counsel, this matter has been gone into several times by yourself in cross-examination and although I don't like to interfere with cross-examination there is a limit to what the [268] Court ought to permit. You have asked this witness all about the contracts and you have reiterated your questions and attacked it and attacked it from several directions, and now you are going back to the same thing so far as I can see.

Mr. Cottis: If the Court will indulge me?

The Court: Go ahead once more but this is the last.

Mr. Cottis: All right, sir, but I think there is one change in here that has not been brought out.

The Court: I doubt if there is any one thing in there that has not been brought out.

(Testimony of Vern Humphries.)

Q. (By Mr. Cottis): Mr. Humphries, in the first of the agreements that was signed that night, which is Plaintiff's Exhibit No. 1, do you find these words which appear in Plaintiff's Exhibit No. 3, referring to you and Havins, the words "\* \* \* and allowed to move or sell additional equipment when agreement terminated \* \* \*"?

A. Well, if it is in there and we signed it that is the way it is.

Q. But it wasn't in the first one that was signed, was it?

A. There can be several words added in there. I didn't type it, my attorney had typed it and I only signed it.

Q. And then the first agreement that was signed had nothing in it giving you the privilege of removing equipment?

A. I don't know. Now, will you ask me that question again?

Q. The first agreement which was signed that night, which is [269] Plaintiff's Exhibit No. 1, did it have anything in it giving you the right to remove equipment?

A. Giving me the right to move or remove?

Q. Remove on termination of the agreement?

A. I would have to read it. I have only looked at it that one night.

Q. Well, Mr. Humphries, you don't have to answer the question because the Exhibits speak for themselves.

(Testimony of Vern Humphries.)

Who were the people who did the labor for you on paper hanging?

A. Who did the work? I did the major work of it myself and Harold Brand did helper's work on it.

Q. Does that make up the total of the \$208 plus the \$100?

A. Per my labor, hanging of paper.

Q. That was the \$208? A. Yes.

Q. Do you recall what contractor had the contract for papering and painting the building?

A. Yes.

Q. Who?

A. He is a witness out here, I can't recall his name right now right off-hand but he had also—and he is a witness in here to my work.

Q. Did he have a contract to do the whole job?

A. No, he was only working by the hour by piece work and he [270] couldn't get to all of it and it was willing by him that I do the work. He did a large amount of work himself on the building.

Q. Mr. Humphries, where did the \$70 worth of mirrors go? A. Where did they go?

Q. Yes.

A. They hung in the men's rest room and the ladies' rest room.

Q. Where did you purchase those?

A. I purchased them at the N. C. Company for the Alaska Railroad and upon my termination there I brought with other equipment and so forth back

(Testimony of Vern Humphries.)

up home and Joe Blackard purchased them from me.

Q. Did he pay for them?

A. Not yet he hasn't.

Q. And they are \$70, is that correct?

A. They are \$70.35 apiece.

Q. Mr. Humphries, did you have any suppliers besides Pay 'n Take It and Grocery Supply?

A. Did I have any what?

Q. Supplies—food suppliers?

A. I had Grocery Supply.

Q. Yes, Grocery Supply Company, Pay 'n Take It and who else?

A. I had, I bought stuff from the Columbia Air Line Cargo. I bought from a number of people in town.

Q. Anybody else that you can recall? [271]

A. Why yes, I bought from a fellow selling war surplus, I can't recall his name either right now, it is Frank someone.

Q. Did you buy foodstuffs from him?

A. Yes, I did.

Q. And did you buy or procure any foodstuffs from the Post Exchange at Fort Richardson?

A. No, I never did.

Q. Mr. Humphries, in your restaurant at the railroad did you have gambling machines?

A. Did I have what?

Q. Gambling machines?

Mr. McCutcheon: Whoops, just a minute. I ob-

(Testimony of Vern Humphries.)

ject to that on the grounds that it is incompetent, irrelevant and doesn't pertain to the issue.

The Court: Objection is sustained.

Mr. McCutcheon: Move that it be stricken.

Mr. Cottis: May I be heard?

Mr. McCutcheon: Did the witness start to answer the question?

The Witness: No.

Mr. McCutcheon: Very well.

The Court: Yes, Mr. Cottis.

Mr. Cottis: Your Honor, a portion of this complaint is that there was card playing and gambling permitted on the Panhandle premises which distracted from the restaurant business and I [272] suggest that it is pertinent if Mr. Humphries in the premises he has completely under his control and which are a restaurant premise had any such equipment.

The Court: Objection is still maintained.

Mr. McCutcheon: May I ask the Court to have the jury disregard it.

The Court: Jury will disregard the question.

Q. (By Mr. Cottis): Mr. Humphries, what did Starns do to injure you?

A. In what way?

The Court: Does counsel mind if we take a recess now?

Mr. Cottis: Certainly not.

The Court: Court will stand in recess until five minutes past four.

(Testimony of Vern Humphries.)

(Short recess.)

The Court: Record will show all members of the jury present without objection, and counsel may proceed with the examination of the witness.

Q. (By Mr. Cottis): Mr. Humphries, was there a separate electric meter on the restaurant premises?

A. I can't recall whether there were or whether there wasn't.

Q. Were there not three meters right near the back door?

A. I think you are right but I am pretty sure of it but I wouldn't swear to it. [273]

Q. Mr. Humphries, did you testify that your average running daily inventory of foodstuffs and consumable supplies was about \$4,000?

A. I don't quite understand.

Q. Mr. Humphries, what was your average daily running inventory of consumable supplies?

A. It stayed more or less around \$4,000, or from three to four thousand, somewhere in there.

Q. You don't mean \$400?

A. I don't mean \$400, no, sir.

Mr. Cottis: Your witness.

### Redirect Examination

By Mr. McCutcheon:

Q. You testified you borrowed a thousand dollars from Hoyt Motor Company, did you, Mr. Humphries? A. Yes.

Q. Do you have some papers there on your desk?



(Testimony of Vern Humphries.)

A. Yes, I do.

Q. Will you look through them with reference to this subject?

Mr. Cottis: Your Honor, I object because I don't recall this matter coming up on cross-examination.

Mr. McCutcheon: I do. It was testified to, Your Honor, that he borrowed a thousand dollars from Hoyt Motor Company; that he borrowed \$1500 from the bank.

The Court: I don't know when it originated but something [274] was asked about it on cross-examination. The objection is overruled.

The Witness: Yes, I have a check here.

Q. (By Mr. McCutcheon): Now, what is that that you have in your hand?

A. It is a check given on the bank—Bank of Alaska.

Q. What is the date of it?

A. The date is the 15th of March.

Q. Whose signature appears on it?

A. Hoyt Motor Company, \$1,000. Signed Alaska Food Service, Vernon Humphries.

Mr. McCutcheon: Offer it in evidence—one more question—is that the check of which you have paid back the thousand dollars that you borrowed?

A. Yes.

The Court: What is that? Let me see it first. It may be shown to counsel for the defendant.

Mr. Cottis: I object on grounds that it is irrelevant, Your Honor.

(Testimony of Vern Humphries.)

Mr. McCutcheon: I submit that it was opened up on cross-examination and that is proper rebuttal.

The Court: I don't recall whether it was opened up on cross-examination or not but it will be admitted and the objection will be overruled and exception noted. It may be admitted and read to the jury. Plaintiff's Exhibit 7, I believe. [275]

The Clerk: Yes, sir.

Mr. McCutcheon: "Bank of Alaska, Anchorage, Alaska, March 15, 1948. Number blank. Pay to the order of Hoyt Motor Company \$1,000.00, words and figures. Signed Alaska Food Service and signed Vernon Humphries."

Q. Referring to the diagram used on cross-examination, Mr. Humphries, what did you say those marks were?

The Court: Counsel is standing between some of the jurors and the witness.

Mr. McCutcheon: I am sorry. Can the jury members see what I am pointing to? There is usually a pointer somewhere around here.

The Witness: May I step down? I can't see quite so clear?

The Court: You may.

Q. (By Mr. McCutcheon): Now, what did you say, Mr. Humphries, those marks represented?

A. That mark there is a "one-armed bandit"—slot machine.

Q. Did you own that slot machine?

A. No.

(Testimony of Vern Humphries.)

Q. Do you know who did? A. Yes.

Q. Who did?

A. It was rented from Leo Tyler to Joe Blackard. [276]

Q. And the other ones, what are they?

A. That is the same and that one at the bottom is a phonograph—an electric phonograph.

Mr. McCutcheon: May I see file 5030, if the Court please?

Q. Now I hand you two items and ask you what they are?

A. This here is Larry Starns' liquor store.

Q. And this one?

A. And this one is the Panhandle Cafe and Bar.

Q. What are these two things?

A. They are pictures of the Panhandle premises.

Q. Are they a reasonable—are they a reasonable representation of the premises in picture form?

A. Yes, they were.

Mr. McCutcheon: Will counsel stipulate that they go into evidence?

Mr. Cottis: No, I will not.

Mr. McCutcheon: Very well.

Q. Now, you testified you borrowed \$450, did you, from Mr. Blackard? A. Yes.

Q. You testified, did you, that you paid it back?

A. Yes.

Q. And where did you say you borrowed the money to pay it back?

A. From Marvin Campbell and Delmar Ingram.

(Testimony of Vern Humphries.)

Q. I hand you two pieces of paper and ask you to tell me what they are?

A. Yes, it is a check and a draft upon a loan at the bank.

Q. Now, the first piece of paper?

A. That is a check.

Q. Is there a date on it?                   A. Yes.

Q. What is the date?

A. March 19, 1948.

Q. Who is that check payable to?

A. Delmar Ingram.

Q. What is the signature on it?

A. Alaska Food Service, Vernon Humphries.

Mr. McCutcheon: Offer it in evidence.

The Court: It may be shown to counsel for the defendant.

Mr. Cottis: Your Honor, I object on grounds of relevancy and on grounds the authenticity of the endorsement has not been proved.

The Court: Very well, let me see it.

Q. (By Mr. McCutcheon): Is that the check, Mr. Humphries, with which you paid Del Ingram the amount you borrowed from him to pay back Mr. Blackard?                   A. Yes, it is.

Mr. Cottis: Your Honor, the fact that Mr. Humphries paid [278] Mr. Ingram some money by check is no evidence at all of any payment to Mr. Blackard.

Mr. McCutcheon: I would like to be heard before you rule.

(Testimony of Vern Humphries.)

The Court: Objection is overruled; it may be admitted and read to the jury.

Mr. McCutcheon: "Bank of Alaska, Anchorage, Alaska, March 19, 1948. Number blank. Pay to the order of Delmar Ingram \$266.00 in both words and figures. Signed Alaska Food Service. By Vernon Humphries."

Mr. Cottis: May I ask that the endorsements on it be read too?

The Court: Endorsements may be read.

Mr. McCutcheon: Delmar Ingram appears to be the endorser. It is stamped Veterans Club, Incorporated on the reverse side.

The Court: Will counsel read the perforated part?

Mr. McCutcheon: It is perforated: Paid 3-22-48. Identification number at the bottom perforated 59-5.

Q. I hand you a piece of paper and ask you to tell me what it is?

A. Yes, it was a draft at the Alaska Bank by Marvin Campbell for \$300 which he loaned me.

Q. Is there a date on it?

A. Yes, there is.

Q. What is the date? [279]

A. Third month, 12th day, 1948.

Q. Is there a signature on it?

A. Yes, there is.

Q. What is the signature?

A. James Garene—G-a-r-e-n-e.

(Testimony of Vern Humphries.)

Q. I don't think anyone can hear you, Mr. Humphries?

A. Garvin, I believe, is the name. It is G-a-r-d-n-e-x it looks like to me. I don't know how to pronounce it.

Q. Now, again, will you state what that is?

A. Yes, that was a loan.

Q. What is this piece of paper?

A. This piece of paper here was a loan Marvin Campbell made at the Alaska Bank for \$300 which he give to me—he placed into the bank to my credit.

Mr. McCutcheon: I ask that it be marked for identification.

The Court: It may be marked as Plaintiff's Exhibit 9 for identification.

Q. (By Mr. McCutcheon): Now, once more I hand you Plaintiff's Exhibit 9 for identification and ask you to tell me what it is?

A. It is a loan of \$300 on credit to Marvin Campbell for \$300, Bank of Alaska.

Q. And is it signed? A. Yes, it is.

Q. By whom is it signed? [280]

A. Signed by James Garmek or some such thing I can't pronounce.

Q. Is there a date on it? A. Yes.

Q. What is the date?

A. Third month, 12th day, 1948.

Q. You testified, did you, that you paid the Northern Supply \$100 for a dishwasher, is that correct? A. Yes.



(Testimony of Vern Humphries.)

Q. Was it a dishwasher? A. Yes.

Q. Will you look through the papers before you and see if you can find something with reference to this subject?

Mr. Cottis: Excuse me, Mr. Reporter, will you read back Mr. McCutcheon's next to the last question?

(Question read.)

Mr. Cottis: Your Honor, I object on that question on the grounds that it is leading and, as a matter of fact, it was not Mr. Humphries' testimony. He testified that he had paid them \$150.

Mr. McCutcheon: Well, the witness has given the answer already, Your Honor.

The Court: No doubt it is leading and it is objectionable upon another ground, and that is, that the question is really not to the witness whether he so testified but the words are [281] virtually put in his mouth. Not having been objected to the answer may stand. Objection is denied.

Q. (By Mr. McCutcheon): Well, I apologize for the leading question. I was merely trying to shorten up the trial, sir.

Q. What is the paper you have before you, Mr. Humphries? A. It is a check.

Q. What is the date on it?

A. The date on it is March, 1948.

Q. And who is it payable to?

A. Northern Supply.

Q. And what signature appears at the bottom?

(Testimony of Vern Humphries.)

A. Alaska Food Service, Vernon Humphries.

Q. What does that check represent?

A. That check represents \$100 on a washing machine.

Mr. McCutcheon: Offer it in evidence.

Mr. Cottis: No objection, Your Honor.

The Court: It may be admitted and marked and may be read to the jury. It will be marked Plaintiff's Exhibit 10.

Mr. McCutcheon: "Bank of Alaska, Anchorage, Alaska, March, 1948. Number blank. Pay to the order of Northern Supply \$100 in words and figures. Signed: Alaska Food Service, Incorporated. Vernon Humphries."

The Court: How about the endorsement?

Mr. McCutcheon: Endorsement is a stamp Pay to the Order [282] of Bank of Alaska, Anchorage, Alaska. Northern Supply. Perforation Paid 3-6-48. And the identification number at the bottom of the check 59-5.

Mr. Cottis: What exhibit number is that?

Mr. McCutcheon: 10.

Q. Do you know Harold Brand, Mr. Humphries?

A. Yes, I do.

Q. Who is Harold Brand?

A. Harold Brand is a young cook—young fry cook.

Q. And did you ever employ him?

A. Yes, I did.

Q. And when?

(Testimony of Vern Humphries.)

A. Well, I employed him. He worked—he was a helper to begin with in February and when I opened on the 6th of March, well, he worked as fry-cook for me.

Q. Where is Harold Brand now?

A. I don't know for sure.

Q. Did you ask him to attend this trial?

A. Yes, I did.

Q. What did he say?

A. He said he would.

Q. Do you know whether or not he is here as a witness?

Mr. Cottis: I object as irrelevant, Your Honor.

The Court: Overruled, you may answer.

Q. (By Mr. McCutcheon): Do you know know whether he is here as a witness?

A. I went down to his house and was informed that he had already left town for a job.

Mr. Cottis: Object to as hearsay.

The Court: Objection to hearsay is sustained.

Q. (By Mr. McCutcheon): Do you have any trade other than being a cook, Mr. Humphries?

A. Yes, I do.

Q. What is that?

A. Interior decorator.

Mr. Cottis: Object to as improper matter not called for by the cross-examination.

Mr. McCutcheon: If the Court please, it is preliminary and counsel opened it up on cross-examination by asking Mr. Humphries about his work in

(Testimony of Vern Humphries.)

the Panhandle and I am attempting to—I am about to show that he performed services as a paper hanger there.

The Court: All right, the objection is overruled.

Q. (By Mr. McCutcheon): Now, did you perform some work in the Panhandle when it was being remodeled, Mr. Humphries? A. Yes, I did.

Q. And what was that work?

A. That was hanging paper and designing the interior work [284] inside the Panhandle.

Q. Who were you employed by?

A. By Joe Blackard and Larry Starns.

Q. Have you been paid?

A. No, I haven't.

Q. Now, who paid for the heat in the premises?

A. I paid for all the heat that came from the range and when the heat was on from the furnace, Mr. Blackard.

Q. How often was the furnace on?

A. It was broken down there, I know, and I don't know when they got it fixed up.

Q. Who paid for the lights?

A. I ended up paying for them.

Q. Who paid for the fuel?

A. I paid for the fuel.

Q. Has Mr. Blackard or Mr. Starns ever paid you for that? A. No.

Q. Now how much did you owe on April 1st, 1948, to creditors?

A. Oh, I would say somewhere around \$2,500 to \$3,000, somewhere around there.

(Testimony of Vern Humphries.)

Q. Were those bills current?

A. Yes, monthly current bills.

Q. Were you paying your bills regularly?

A. Yes, I were.

Q. Was your credit good, bad or indifferent?

A. Good.

Mr. Cottis: I object, Your Honor, it is asking for a conclusion.

The Court: Overruled.

Q. (By Mr. McCutcheon): Was your——

A. It was good.

Q. How was your credit after you closed your restaurant?

A. It was no good.

Mr. Cottis: Same objection, Your Honor.

The Court: Same ruling, overruled.

Q. (By Mr. McCutcheon): Did you pay your bills after the 1st of April?

A. No, I didn't. I paid some but I didn't pay my grocery bill or meat bill.

Q. And who do you owe a grocery bill and a meat bill?

A. Grocery Wholesale Supply I owe around \$3,000-\$3,300.

Q. Who represents the Grocery Supply?

A. Jack Barrett.

Q. Is he here as a witness?

A. Yes.

Q. For you?

A. Yes.

Mr. Cottis: Your Honor, I object to that and ask that it be stricken out as improper. [286]

The Court: Answer may be stricken. I think

(Testimony of Vern Humphries.)

that that is not proper at this time, if at all. Jury will disregard it.

Q. (By Mr. McCutcheon): Now, do you owe Frank Jones any money at this time?

A. No, I don't.

Q. Have you ever owed Frank Jones any money at any time?

A. In the winter time of 1947 quite often my wife called Hy's Cab Company to take my children to school and we run a currently account there at that time. It was around a few dollars a month.

Q. Did you owe him any money in March, April and May, 1948?      A. No, I didn't.

Q. Did you ever owe him any money for hauling moose meat anywhere?

A. He never did haul any moose meat for me.

Q. Do you know if Joe Blackard owes him any money for hauling moose meat?      A. Yes, I do.

Q. Did he owe him any money for hauling moose meat?      A. \$145.

Mr. McCutcheon: Your witness.

#### Recross-Examination

By Mr. Cottis:

Q. Mr. Humphries, how do you know that Joe Blackard owes [287] Frank Jones any money?

A. Because Frank Jones told me direct himself.

Mr. Cottis: Well, Your Honor, I ask that the answer that he gave be stricken because his preceding answer was perjury because he stated that he knew and it was based on hearsay.



(Testimony of Vern Humphries.)

The Court: It is not perjury.

Mr. Cottis: Well, mistaken.

The Court: Do counsel wish to be heard on that?

Mr. McCutcheon: Yes, Your Honor. I asked him if he knew if Joe Blackard owed Frank Jones any money, to which he replied yes, and on cross-examination Mr. Cottis asked him how he knew and I think his answer is proper.

The Court: No, his answer is based upon hearsay testimony. Now it is true, we all know, that the Battle of Gettysburg was fought at one time, and I suppose that is all hearsay; but in courts of law what one person states to another ordinarily is not admissible in evidence. If the witness says he knows and then it is revealed that he knows because somebody tells him, that doesn't make it competent evidence, and therefore the motion is granted and the answer is stricken and the jury is instructed to disregard that answer.

Q. (By Mr. Cottis): Now, Mr. Humphries, how do you know that Mr. Blackard had some moose meat hauled by Mr. Jones?

A. Mr. Jones said he made a trip for him and hauled him some [288] meat to my house and my wife—Mr. Blackard was present—when Mr. Blackard approached my wife at home and said he had some meat for me and placed it on my front porch.

Mr. Cottis: Your Honor, I ask that his previous answer to Mr. McCutcheon's question be stricken regarding the moose meat for the same reason—it

(Testimony of Vern Humphries.)

is based on something that he says he was told by Mr. Jones.

The Court: Well, I don't know. Read the last answer, if you will?

(Answer read.)

Mr. Cottis: That is the answer to Mr. McCutcheon's question, on redirect examination.

The Court: Witness said something else about Mr. Blackard bringing the meat to his house and I am wondering whether that alters the situation. The jury is ordered to disregard the witness' statement on what Mr. Jones told him, it is not competent evidence and the jury shouldn't give any attention to testimony based on what somebody else told him. Now, if his testimony is based on what Mr. Blackard told him or what Mr. Blackard did that is another matter entirely. Counsel may proceed with the examination.

Q. (By Mr. Cottis): Mr. Humphries, when was it that Mr. Starns and Mr. Blackard employed you as a paper hanger?      A. In February. [289]

Q. About what part of February?

A. Well, starting somewhere in the neighborhood of around the 10th of March—10th or 11th of March. The first bill that I bought for paint and paper was March 11th, 1948, Panhandle Cafe and Bar.

Q. But, Mr. Humphries, remodeling was finished in the bar—didn't you testify that the remodeling was finished and everything open on March 6th?

(Testimony of Vern Humphries.)

A. I made a mistake here, this one is March 1st instead of March 11th. All the paper were not finished at March 6th. We were still hanging paper as we opened up and we had still some to do two or three days later on.

Q. Mr. Humphries, was this another oral contract?

A. Well, Mr. Blackard hired me personally.

Q. In a conversation or in writing?

A. In a conversation.

Q. Can you recall the conversation?

A. Yes.

Q. Will you relate it to the Court?

A. The paper that he had hired to do the work——

Q. Just relate the conversation or what you know of your own knowledge?

A. Joe Blackard was very disgusted with the slowness of the paper hanging and the painting of it.

Q. Will you just relate the conversation, Mr. Humphries? [290]

A. Mr. Blackard asked me if I would hang the paper and do the painting on account of the other painter's drunk.

Q. Aren't you forgetting something, didn't Mr. Starns ask you, too?

A. Yes, Mr. Starns asked me as well for his liquor store and so forth, which I did the work.

Q. Which one asked you first?

(Testimony of Vern Humphries.)

A. Well, I think both of them asked me just about all the same day, to tell you the truth about it.

Q. How much were they supposed to pay you for the work?      A. Painter's wages.

Q. And what were they?

A. Painter's wages in Anchorage, Alaska, is \$3.75 an hour.

Q. What unions are you a member of?

A. I belong to the Master Contractor's in Seattle, Washington, which is recognized all over the world as a body union and I belong to the Cook's Local for a number of years.

Q. Are you recognized locally on this Master Contractor's Union?      A. Yes, sir, I am.

Q. And were you at that time?

A. Painting is rather a hobby for me.

Q. Now, this was paper hanging, was it not?

A. Paper and hanging and painting.

Q. Both hobbies? [291]

A. Yes, I do both.

Q. Mr. Humphries, how many hours of work was there to do in Starns' Liquor Store?

A. There was 24 hours in paper hanging and painting and 24 hours in helper's time spent.

Q. That was in Starns' Liquor Store?

A. Yes, it were.

Q. And then how much was there to do in the Panhandle premises?

A. 70 hours. This other painter had two or three other men working there as well as myself as well

(Testimony of Vern Humphries.)

as this Harold Brand and I did not keep their time because Joe was paying them and I was keeping my own time which the man is here to testify.

Q. Mr. Humphries, why wasn't anything set out in your complaint in this action about this little indebtedness?

A. I could not answer that, I don't know for sure whether it were or wasn't.

Q. Did you ever bill Mr. Starns or Mr. Blackard?

A. Yes, sir.

Q. And do you have any copies of the bills?

A. I do have.

Q. And how much did you bill Mr. Starns?

A. \$150.

Q. And how much did you bill Mr. Blackard?

A. For my labor in there was \$208.37. [292]

Q. And then your helper's wages?

A. And the helper was \$2.50 an hour was \$100. There was two mirrors purchased at \$70. The whole total thing was \$79.87.

Q. When did you send any bills to them?

A. On the 1st day of April.

Q. Did you ever have any conversation with them about those bills?

A. Several times with Mr. Blackard but not with Mr. Starns.

Q. And will you tell me again about when it was that they made this deal with you that you were to do paper hanging for them?

A. Oh, it was somewhere along about the, I

(Testimony of Vern Humphries.)

would say, around the 10th of February, Maybe 15th, somewhere in early—middle of February.

Q. It was after the 4th of February when your contract was signed, is that correct?

A. That is correct.

Q. And it was before the 25th of February, is that correct?

A. Well, right off-hand, I could not—it had to be, it was somewhere around in there. It was in February that I started work in there and I had spent the sum of 70 hours in one place and 24 hours in the other.

Mr. Cottis: That is all, Your Honor.

The Court: That is all, Mr. Humphries, unless counsel has further questions to ask. You may step down, Mr. Humphries, [293] and another witness may be called.

### Redirect Examination

(Continued)

By Mr. McCutcheon:

Q. The figure of \$3.75 an hour is the going scale for painters at that time which would be before some of their present raises. That included your materials, which you said you got at Paddock's?

A. No, that didn't include the materials; that only included paint brushes and your paper board and the tools that you use—scaling and stuff you use that way—and that was night work; in fact, it was \$4.75 but I knocked off a dollar an hour.



The Court: Anybody else have any questions?

(No response.)

The Court: That is all, Mr. Humphries. Another witness may be called.

Mr. McCutcheon: Mr. Prator, will you step forward and take the oath and take the witness stand?

Your Honor, I am informed and I believe that Mr. Prator has been present in the Court room during some of the testimony.

The Court: Have you been present in the Court room, sir, during the trial?

The Witness: No, sir, Your Honor, I haven't. The only time I came in was to speak to Mr. McCutcheon and at the time I don't know who was on the stand even. I walked in the front door and I had a word with Mr. McCutcheon and I walked right out again. [294]

The Court: Very well.

## HARRY PRATOR

being called as a witness, having been duly sworn, took the stand and testified as follows:

### Direct Examination

By Mr. McCutcheon:

Q. Will you state your name, please?

A. Harry Prator.

Q. And where do you live in Anchorage, Mr. Prator? A. I live at 15th and East H.

Q. And where are you employed?

(Testimony of Harry Prator.)

A. MK Company.

Q. Did you have occasion to be in the Panhandle premises during the months of March and April, 1948?      A. I did.

Q. Did you have occasion to see what businesses were being conducted there?      A. I did.

Q. Do you know whether or not there were any card games going on there?

Mr. Cottis: I object, Your Honor, as leading.

The Court: Overruled.

Q. (By Mr. McCutcheon): Do you know whether or not there were any card games going on there? [295]      A. There was.

Q. And did you see them yourself?

A. I did.

Q. You are a former member of the Anchorage Police Department, are you not?

A. Yes, sir.

Q. How old are you?      A. 33.

Q. Are you married?      A. I am.

Q. Do you have any children?      A. Two.

Q. Now, where were these card games located in the Panhandle premises?

A. They were located in the rear of the building just beyond the cafe.

Q. Did you ever have occasion to eat there at the cafe?      A. I did.

Q. How often were you in there to eat?

A. I was there two or three times a week, I would say, maybe more often.

(Testimony of Harry Prator.)

Q. And were the games frequently in session?

A. They were.

Q. Were there a number of players or a few or none at all around the card games? [296]

A. There were a number of players.

Q. What were they playing, do you recall?

A. Well, no, I couldn't say truthfully what they were playing, but they bought chips and so on.

Mr. McCutcheon: Your witness.

### Cross-Examination

By Mr. Cottis:

Q. Where did they buy chips, Mr. Prator?

A. From the dealer.

Q. And how many tables were there?

A. At this particiular time that I remember there were one table in operation, if I am not mistaken which I don't think I am there were three tables in the place. There were one in operation.

Q. And they were located between the restaurant counter and the south wall of the building, is that right?

A. That is right.

Q. And you think there were three tables there?

A. I am almost positive there were three tables.

Q. Now, you say that your memory is—how many times do you recall seeing card games there?

A. Well, that I couldn't say, but I was in there two or three times a week, maybe more often, and I saw card games being played there.

(Testimony of Harry Prator.)

Q. Did you ever see a card game at more than one table? [297]

A. I don't remember if I did or not but I do remember seeing one table going.

Q. Do you remember very clearly, do you, seeing a card game at a table once?

A. More than once.

Q. More than three times?

A. More than three times, sure.

Q. More than ten times?

A. Well, I will say I saw a card game everytime I was in there when the card game was being played.

Q. Mr. Prator, can you pin down the months a little more specifically for us, what time of year this was?

A. I am pretty sure it was around March or April, maybe both months.

Q. Do you think that you ate in there three times a week for eight consecutive weeks?

A. Well, I couldn't say how long I ate there but I did eat there most of the time. The reason that I remember that, my wife was outside and I ate there most of the time.

Q. That is while she was gone you ate there?

A. Yes, sir.

Q. Can you recall when she left and when she came back?

A. She left in February and she came back in May.

Q. Can you remember what part of February it was when she left?

(Testimony of Harry Prator.)

A. Around the first part of February. [298]

Q. And she came back about what part of May?

A. Well, off-hand I don't remember just the date.

Q. Then you ate there to the best of your recollection during the entire months of February, March, April and part of May?

A. Not that particular place but I ate quite a bit there, yes.

Q. Were you eating there some in each of those months?

A. Well, that I couldn't be positive there because I don't recall just the date the cafe opened.

Q. How many times do you think you ate there altogether?      A. Oh, of that I couldn't say.

Q. Did you ever eat there more than three times in any one week?      A. Yes.

Q. How many times did you eat there in the week at which you ate there most frequently? Did you ever eat 7 days a week there?

A. I don't think I ate there 7 days a week.

Q. Were you ever in there when there was not a card game in operation?

A. Not that I recall.

Q. And, again, what is your estimate of how many times you were in there altogether?

A. Well, I couldn't estimate that.

Q. You estimated three times a week, didn't you?

A. Oh, well, I would say something like that, yes. [299]

(Testimony of Harry Prator.)

Q. And, now, could you estimate for us the number of weeks?      A. No, I couldn't do that.

Q. Can you give us any estimate at all of how many times you saw card games in there?

A. No, I don't think I could.

Q. During that same period of time were you eating at other places occasionally?      A. Yes.

Q. Did you observe any card games in any other places?

Mr. McCutcheon: Objected to, immaterial.

The Court: Overruled.

The Witness: Yes, I did.

Q. (By Mr. Cottis): And more than one other place?

Mr. McCutcheon: Objected to as immaterial.

The Court: Overruled.

The Witness: Yes, more than one other place.

Q. (By Mr. Cottis): Did you observe any effect on the restaurant operation from the card players at the Panhandle?

A. No, I don't, I couldn't say that, no.

Q. When you first ate there, did the fact that there were players at this card table bother you?

A. Well, I couldn't say they bothered me, no, because when I was on the force I was working nights around places and I [300] suppose I got more or less used to that.

Q. When were you on the force, Mr. Prator?

A. December 18, 1946, to January 28, 1948.

Q. When you were on the force did you ever go



(Testimony of Harry Prator.)

into the Panhandle on Duty?           A. No.

Q. Were you ever in the Panhandle when you were a member of the force?           A. Yes.

Q. Were there card games in there during those visits?

A. That was the old Panhandle, I believe,—

Q. Yes.

A. —at the time.

Q. Were there card games in there?

A. Yes, occasionally.

Q. Were there more or fewer card tables than there were when Humphries was operating that restaurant?

A. I think there were about the same.

Q. And that is three, is that correct?

A. I think there were three, yes.

Q. While you were eating in there during the months of February and March, April, and possibly part of May, 1948, did you ever observe any other customer of Mr. Humphries who seemed to be bothered by the card table? [301]

A. No, I didn't hear anything about that.

Q. Were the card players that you observed in there noisy or quiet?

A. Well, they were noisy at times, yes.

Q. What time of day would you eat in there?

A. No certain time.

Q. Well, was it generally in the morning or at noon or at night?

A. In the evening and afternoon.

(Testimony of Harry Prator.)

Q. Did you ever have lunch in there that you remember?      A. Pardon me?

Q. Did you ever have lunch around noontime in there?

A. Well, I don't think that I was down that early.

Mr. Cottis: No further questions.

Redirect Examination

By Mr. McCutcheon:

Q. Does any incident stand out in your memory with reference to card games, Mr. Prator, at the Panhandle?      A. Well, yes.

Q. What incident was that, tell about it?

A. Well, one particular time I was in there, I ate and then I went over and I watched the games for a little while. There was some fellow, he seemed to be a habitual drunkard, he was sitting at the next table which was close to the one in operation and a chip fell on the floor and this fellow picked it up and [302] it made the dealer awfully mad, so he got up from behind the table and he told this fellow to get out. In fact, he kind of pushed him and helped him part of the way out—about half way of the building, I guess, and he went back to the table and I overheard him say that this fellow hung around the game there and every time a chip fell on the floor——

Mr. Cottis: Object to anything he overheard said, Your Honor.

(Testimony of Harry Prator.)

The Court: Overruled.

The Witness: This fellow would pick the chip up and if they let him keep it he would go over to the bar and buy a drink with it. He was more or less molesting the players there.

Mr. McCutcheon: Your witness.

Recross-Examination

By Mr. Cottis:

Q. About when did that occur, Mr. Prator?

A. Well, at the—you mean time of day?

Q. Well, time of day and time of the year, if you can recall?

A. No, I can't recall that, but it was in the evening.

Q. Was it while Kenneth Havins and Humphries were operating that restaurant? A. Yes.

Q. Did you go in there as frequently after Havins had left as you did before?

A. I did. [303]

Q. Have you known Havins quite a long time?

A. Only when he joined the police force, the first time I knew him.

Mr. Cottis: No further questions.

The Court: That is all, sir. That will conclude our work for today in this case.

Ladies and Gentlemen of the Jury, it has become necessary to hold a short term of Court at Cordova commencing tomorrow morning at ten o'clock and

therefore you are excused until next Monday morning at ten o'clock.

In the meantime you will remember your duty not to discuss the case among yourselves or with others or to listen to any conversation about it and not form or express an opinion until it is finally submitted to you.

You may retire and report next Monday morning at ten o'clock.

(Whereupon, at five o'clock p.m., Thursday, June 23, 1949, the case was recessed until ten a.m., Monday, June 27, 1949.) [304]

Monday, June 27, 1949

The Court: Roll of the jury may be called.

(Names of jurors called and responded to.)

The Clerk: They are all present, Your Honor.

The Court: Another witness may be called.

Mr. McCutcheon: Call Mr. Jack Barrett.

JACK BARETT

called as a witness, being first duly sworn, took the stand and testified as follows:

Direct Examination

By Mr. McCutcheon:

Q. Mr. Barrett, will you state your full name and spell your last name for the Clerk.

A. Jack Barrett, B-a-r-e-t-t.

(Testimony of Jack Barrett.)

Q. You are one of the owners of the Food Center, are you not, Mr. Barrett?

A. That is right.

Q. Did you have occasion to do business with Vernon Humphries during the months of March, April and May of 1948?      A. Yes.

Q. Does Mr. Humphries now owe you money?

A. Yes, he does.

Q. How much does he owe you, approximately?

A. Approximately \$3,000.

Q. Now, did you have occasion to be visited by Mr. Joe Blackard [307] during the latter part of May, 1948?      A. Yes, we did.

Q. Did you have a discussion with him?

A. Yes.

Q. And will you state the nature of the discussion, what happened? Where did this take place?

A. It took place in our grocery supply warehouse which is in the terminal yards and he paid us a visit and he wanted to know if we were still selling Humphries merchandise and that if we were it was very foolish because they were—He stated that if we were doing business with Humphries in selling groceries on an open account it was rather foolish because he wouldn't be in business very long, that they were going to see that he was not operating much longer.

Q. That is the gist of the conversation with him?

A. He also advised that we go up there and pick up what groceries we had left up there, that we had sold.

(Testimony of Jack Barett.)

Mr. Cottis: Mr. Barett, that was in the latter part of May, 1948?

The Witness: Yes.

### Cross-Examination

By Mr. Cottis:

Q. This \$3,000 account that Humphries and Campbell owe you, can you tell me over what period of time that accrued?

A. That was one month's bill plus a few days in the following month. Now, I don't have the statement of their accounts so I can't tell you the exact period but it runs about 40 days. [308]

Q. Can you recall whether it was March, April or May?

A. No, the only thing that I could tell you on that was that the previous month's business had been paid in full on the date when it was supposed to have been paid.

As I recall it, the March bill had been paid in full on April 10th. The April bill and running ten days, approximately, in May is the amount still owing.

Q. Did you ever suggest to Mr. Blackard that he should be responsible for Humphries' bills?

A. Well, I don't believe that that was ever mentioned.

Q. Is there a man by the name of Harry Andrews in your employ?      A. Yes.

Q. Did you have any conversation with Andrews



(Testimony of Jack Barrett.)

relative to Blackard's possible responsibility for the Humphries bill?

A. No, I can't say that we ever seriously considered that Blackard would be responsible for that bill at all. It might have run in our mind that there might be a possibility but I don't believe it was ever considered seriously.

Q. Have you tried to collect that bill from Humphries?           A. Yes.

Q. Have you had any success?

A. Not as yet.

Q. What steps have you taken in trying to collect it?

A. Well, it has been placed in the hands of the collection [309] agency.

Q. How long ago was that?

A. I would say approximately one year.

Q. About a year ago it was turned over to a collection agency, is that correct?

A. Yes, well, it is approximately a year, I can't tell you the exact date without looking them up.

Q. And no portion of it has been paid?

A. Not as yet.

Mr. Cottis: No further questions.

The Court: That is all.

Mr. McCutcheon: Call Harry Andrews.

Mr. Cottis: Mr. Barrett, we will want you as a witness for the defense so will you be available? We can telephone you.

## HARRY ANDREWS

called as a witness, having been duly sworn, took the stand and testified as follows:

## Direct Examination

By Mr. McCutcheon:

Q. Mr. Andrews, will you state your name, please, and spell your last name for the Clerk?

A. Harry Andrews. A-n-d-r-e-w-s.

Q. You work with Mr. Barrett at the Food Center, do you not?      A. I work for him.

Q. Were you working there during the months of March, April [310] and May, 1948?

A. Yes.

Q. Did you have occasion to do business with Mr. Vern Humphries?      A. Yes.

Q. Did you have occasion to have a conversation with Mr. Joe Blackard during the latter part of May, 1948, with reference to Mr. Humphries?

A. We have spoken to him quite a bit. He came down to the warehouse one day.

Q. You will have to speak up just a little bit.

A. He came down to the warehouse one day and we had a little conversation.

Q. Who came to the warehouse?

A. Blackard and his partner, I believe it was.

The Court: Blackard and who?

The Witness: His partner or a man, whatever his name is.

Q. (By Mr. McCutcheon): Do you recall his name?

(Testimony of Harry Andrews.)

A. I don't know the gentleman very well.

Q. And tell what was said?

A. Well, I can't recall what was said because I didn't say much—talk to them. I know Blackard quite well. I know them all quite well, that is, Humphries and Blackard. We are always talking. [311]

Q. You were subpoenaed to come here, is that right, Mr. Andrews?      A. That is right.

Q. Will you tell what was said at that time with reference to Mr. Humphries?

A. I can't recall his exact words.

Q. What was the effect of it? What was the gist?

A. The gist was we were doing business with Humphries and that if we wanted to come out over and above that we should discontinue it and not give him any more groceries, that he wouldn't be in business very long or words to that effect.

Mr. McCutcheon: Your witness.

### Cross-Examination

By Mr. Cottis:

Q. Mr. Andrews, had you had a previous conversation with Blackard respecting Humphries?

A. Oh, I can't say that we have had—I have talked to both of the boys quite a bit.

Q. Isn't it true, Mr. Andrews, that you suggested to Blackard that he might be responsible for Humphries' bill?

(Testimony of Harry Andrews.)

A. I suggested the Panhandle be responsible for Humphries' bill.

Q. That is, the ownership of the Panhandle might be responsible for Humphries' food bill?

A. That is right. [312]

Q. And that was prior to this conversation?

A. My job is to collect money. My job is to collect money in any way I can that is owing. If I can put pressure on people who owe us I do it.

Q. And you did intimate to Mr. Blackard that you might look to the entire Panhandle management for the Humphries' bill?

A. That is right; that is the way the account is set up on the Panhandle.

Q. And that is prior to this conversation that took place at the warehouse in the latter part of May?

A. I can't say prior or not but I do know it was right around there. I know I was working pretty hard trying to get my money.

Q. The partner of Blackard that you spoke about as having been present, was that Glen Phillips, do you recall?

A. I believe it was.

Q. Do you know Larry Starns?

A. I know of him, yes.

Q. Was it Larry Starns who was with Blackard?

A. It wasn't Mr. Starns, no.

Q. He was not with Mr. Starns?

A. No.

Q. Mr. Andrews, you have in your possession an inventory of the foodstuffs left at the Panhandle by Humphries?

(Testimony of Harry Andrews.)

A. I haven't been able to locate that inventory.

Q. You haven't? Do you recall about what the dollar amount [313] of that inventory was?

A. No, I never completed the valuation of it but I have an approximate idea of it.

Q. Will you tell me what that is?

A. All I valued on it was the merchandise that I had sold them which I knew was still in stock and I picked that merchandise off. It ran around \$400-\$450.

Q. And that was the complete inventory of consumable supplies?

A. Those were items that I sold them. There were other items on the inventory I hadn't sold them.

Q. What portion of the total inventory does those other items constitute?

A. Only a small part.

Q. Was the total amount of the inventory to the best of your recollection more than \$600?

A. I would say the inventory was—if I was buying it—I would pay \$800 for it.

Q. How much?

A. I would pay \$800 for it if I were buying.

Q. Would you pay as much as a thousand?

A. No, I would pay \$800.

Q. Do you recall when that inventory was taken?

A. Not exactly, no. I didn't take it.

The Court: What is that—You didn't take it?

The Witness: No, sir, I didn't take it. [314]

(Testimony of Harry Andrews.)

Mr. Cottis: No further questions.

Redirect Examination

By Mr. McCutcheon:

Q. This is an inventory sheet that you saw sometime after the place was closed, was it not?

A. It was an inventory that was taken to my knowledge after Vern—Mr. Humphries—was out of the place and it was taken by a competitor.

Mr. McCutcheon: Thank you very much.

Mr. Cottis: One further question, if the Court will indulge me.

Recross-Examination

By Mr. Cottis:

Q. Did Blackard request you to come down and take an inventory of Humphries' supplies?

A. I don't recall whether it was a request or not but I do know there was some talk of it and I believe he had asked another party to take that inventory for him.

Q. Has Blackard ever offered to you any inventory items that you had sold Humphries?

A. He suggested it one day that I come down there and take my merchandise out of there, if that is what you mean?

Q. Yes. Did you do it?

A. No, I couldn't do that.

Q. That was after the restaurant had been closed? [315]

A. That is right.



Mr. Cottis: No further questions.

Mr. McCutcheon: Thank you very much, Mr. Andrews.

The Court: Have the jurors any questions?

(No response.)

The Court: That is all, sir. Another witness may be called.

Mr. McCutcheon: Call Mr. Robison.

The Bailiff: Your Honor, Mr. Robison is not in the witness room.

Mr. McCutcheon: Call Mr. Spradlon.

The Bailiff: He is not in the witness room, only Mr. and Mrs. Jones and one other gentleman, I don't recall his name, are in there now at this time.

Mr. McCutcheon: Call Mr. Frank Jones.

### FRANK V. JONES

called as a witness, having been duly sworn, took the stand, and testified as follows:

#### Direct Examination

By Mr. McCutcheon:

Q. Will you state your name please and spell your last name?

A. Frank V. Jones, J-o-n-e-s.

Q. What is your occupation?

A. Cab owner.

Q. And what cab do you own? [316]

A. I own Hy's Cab.

Q. Were you subpoenaed to come here?

(Testimony of Frank V. Jones.)

A. Yes, I was after 26 attempts.

Q. What?

A. 26 attempts trying to get me over here.

Q. Who has been trying to get you over here?

A. Oh, I guess you have and 26 other people.

Q. Do you have a contract with Mr. Starns to haul fares to Fort Starns?      A. I have——

Mr. Cottis: I object to that as immaterial and completely irrelevant.

Mr. McCutcheon: I wish to show the relationship to the defendant, if there is any. This witness is a reluctant witness, Your Honor and we have had an awful struggle getting him here. He wasn't lying when he said that.

The Court: Overruled.

Q. (By Mr. McCutcheon): Do you have such a contract with Mr. Starns?

A. I have no contract with no individual, persons or business people in this town.

Q. Now, what cab company did you say you owned?      A. I own Hy's Cab.

Q. Do you own any other cab companies?

A. Yes, I do. I own one-third interest in Richardson Cab [317] Company.

Q. Does that cab company have a contract with Mr. Starns?

A. That cab company has no contract with no one.

Q. Did you talk to Mr. Starns recently with reference to this lawsuit?

(Testimony of Frank V. Jones.)

A. I have never talked to Mr. Starns and I don't know Mr. Starns.

Q. Have you talked to Mr. Blackard recently with reference to this lawsuit?

A. I have never talked to Mr. Blackard on this case.

Q. Were you not visited by Mr. Blackard on or about the 23rd day of this month at your home on the outskirts of Anchorage by Mr. Blackard with reference to this lawsuit?

Mr. Cottis: Objection, Your Honor, it is leading.

The Court: Overruled.

A. The 23rd of this month I have never been visited by Mr. Blackard at my home.

Q. Were you on or about the 23rd, perhaps the 24th or the 24th or the 22nd visited by Mr. Blackard?

A. No, sir, not at my home.

Q. Well, has he visited you?

A. He has visited me but not on this case.

Q. Where at?

A. At my cab stand at 713½ Fourth Avenue.

Q. And when was that? [318]

Mr. Cottis: I object, Your Honor, it is irrelevant.

The Court: Overruled.

The Witness: If I am not mistaken it was Friday night about 5:15 in the afternoon when he called me. In fact he did not call for me in person, he called for a cab and I happened to be the one was

(Testimony of Frank V. Jones.)

in so I took the call to go to Mr. Blackard's house. I think the address is 725 Seventh Avenue, if I am not mistaken. And Mr. Blackard never said anything to me about this case.

I just told him "I guess I am going to have to go up on the witness stand about something on this case and I don't intend to want to go." I said "I don't want to get mixed up or involved in it any more than what I am."

Q. (By Mr. McCutcheon): Did you have occasion to have a conversation with Mr. Glen Phillips during the month of April toward the middle of the month of April, 1948, with reference to some moose meat?

A. I could not state that to be true about moose meat or what meat it was.

Q. Did you have a conversation with Mr. Glen Phillips?

A. I had a brief conversation on the 'phone, yes.

Q. And what was the nature of that conversation, tell if you can recall?

Mr. Cottis: I object, Your Honor, unless Mr. Jones can affirmatively state that he knows that it was Mr. Phillips he was talking with. [319]

The Witness: I cannot state that because over a 'phone you cannot state a voice of anyone.

Q. (By Mr. McCutcheon): Have you had occasion to discuss this lawsuit with anyone recently?

A. Yes, I had occasion to discuss this lawsuit with my wife.

(Testimony of Frank V. Jones.)

Q. And with anyone else?

A. No, sir, I have not.

Q. Did you have occasion to discuss the matter of your being subpoenaed with Mr. Grigsby?

A. I did not do—have anything to say to Mr. Grigsby, I just was out of town. I had some business appointments to make out of town and had some land that I was looking at for a cement factory here and I was on that—to go out of town to take care of that matter and I had my wife to call Mr. Grigsby and asked him if I had to go or what the things would be, because I had some very important business out of town to attend to besides sitting over here.

Q. Do you know Glen Phillips?

A. I know Mr. Glen Phillips.

Q. Do you know his voice when you hear it?

A. I cannot say that I recognize his voice to sit up here on the witness stand to say “Yes.”

Q. Did you have a conversation with Mr. Glen Phillips on the 'phone during the month of April, 1948, with reference to some [320] moose meat?

Mr. Cottis: I object, Your Honor, unless Mr. Jones knows it was Glen Phillips.

The Court: Overruled, that is the very question. He can answer it.

The Witness: I cannot swear to it, no, sir, and I won't.

Q. (By Mr. McCutcheon): Did one of your drivers have occasion to haul some moose meat about that time?

(Testimony of Frank V. Jones.)

A. Can I put this into my own story for the jury and yourself to straighten it up?

Q. Certainly you can.

A. I am up here to tell the truth and it is going to hurt someone, it might hurt me, I don't know. I would like to take it back a little further to tell when I knew Mr. Humphries and Mr. Blackard.

The Court: It is the duty of the Court to tell you that you are not compelled to say anything that may incriminate you. Now if the story is such that it may lead to your prosecution you are not obliged to say it. The Constitution of the United States provides that no one shall be required to incriminate himself. That doesn't mean that you shall give that as a fictitious ground for not telling the truth as to something that may be important in the case. But, nevertheless, the By-Laws of the Constitution do provide that nobody need to incriminate [321] himself. Now, with that in mind you may proceed.

Mr. McCutcheon: I would prefer to have these questions and answers to keep the record straight, Your Honor.

Mr. Cottis: Your Honor, the witness requested that he be allowed to tell his story and I ask his request be complied with.

Mr. McCutcheon: No, I object, Your Honor, he will undoubtedly——

The Court: You may ask questions.

The Witness: As everyone knows——

The Court: Just a moment, counsel is going to ask you questions.



(Testimony of Frank V. Jones.)

Q. (By Mr. McCutcheon): Did one of your drivers have occasion to haul some moose meat from Wasilla on or about the 15th of April—during the month of April, 1948?

Mr. Cottis: I object, Your Honor, unless the witness knows it of his own knowledge. From the phrasing of the question it seems apparent that it is a question that only the driver would know.

The Court: That is counsel's own conclusion. The witness is being asked as to what he knows and it is not well for counsel to thus instruct a witness not to answer.

Mr. Cottis: Very well, Your Honor. [322]

The Witness: As I was subpoenaed over here on the subpoena—

Mr. McCutcheon: Just a moment, I don't want to argue with you but the Court has instructed you that you don't have to answer any question that will tend to incriminate you.

The Witness: I am not going to.

Q. (By Mr. McCutcheon): Now, if you feel that this answer will tend to incriminate you, you need not state it. Now, did one of your drivers have occasion to haul some moose meat?

The Court: And you are to speak from what you know.

The Witness: I can't tell you the exact date but, yes, we did haul some moose meat from Wasilla.

Q. Did you instruct one of your drivers to haul—

(Testimony of Frank V. Jones.)

A. I never instruct my drivers to haul moose meat or any kind of freight.

Q. Did you instruct your driver to go there?

A. I never instructed. The call came to go to Wasilla and the man went.

Q. Who was the driver?

A. Hagil. I can't think of his last name right off. His first name is Hagil and he has driven at Red Cab right today.

Q. Now, what occasioned you to request your driver to go to Wasilla?

A. I never requested my driver to go to Wasilla because I [323] wasn't in the stand at that time.

Q. What occasioned—excuse me, go——

A. At that time I was not at the stand when the call came in.

Q. What occasioned your driver to go to Wasilla?

A. As far as I know the driver—there was a 'phone call came in.

Q. From whom?

A. From the Panhandle.

Q. And from whom in the Panhandle?

A. I cannot state who it was from because I can't verify it myself.

Q. Who did the person on the 'phone identify himself to be?      A. Well——

Mr. Cottis: Your Honor, the witness has already testified that he doesn't know of his own knowledge.

The Court: He can answer this question if he knows.

(Testimony of Frank V. Jones.)

Q. (By Mr. McCutcheon): Who did the person on the other end of the 'phone identify himself to be?

A. I will ask one question, and I want to know if I can say it right or no, and then I can be straight in this, but I can't this way.

Q. Just answer that question, Mr. Jones?

A. I cannot answer that question. [324]

Q. Did the person on the other end of the 'phone identify himself? A. To me, no.

Q. Do you know who it was?

A. As far as I know——

Mr. Cottis: How could he know who it was.

Mr. McCutcheon: He might have recognized his voice.

The Witness: When this 'phone call——

Mr. McCutcheon: Just a moment.

The Court: Overruled.

Q. (By Mr. McCutcheon): Do you know or not?

The Court: Answer to what you know.

The Witness: No, I cannot tell you that. I have answered you twice, no.

Q. (By Mr. McCutcheon): During the latter part of May at my office in the presence of Mr. Humphries, Mr. Campbell, myself, yourself, present, did you not say to me in substance as follows: "Glen Phillips called me on the 'phone and asked me to go to Palmer to pick up some stuff," did you or did you not make that statement?

A. I said that statement in this way, I says——

(Testimony of Frank V. Jones.)

Q. Did you or did you not make that statement at that time?

Mr. Cottis: I object to this arguing with the witness; let him answer in his own way. [325]

The Court: Overruled.

The Witness: I said it in this way: We got a 'phone call from the Panhandle and I do not answer the 'phone myself through the switchboard at my office. The 'phone call came to the switchboard operator as the operator, says "This is Glen Phillips at the Panhandle, will you send a cab to the Panhandle?" and she says "Yes"——

Q. (By Mr. McCutcheon): And——

A. ——and that is the same statement I gave you and as far as I know that was the same statement I gave you that day when you asked me the question.

Q. Now, let's have that all again just one more time, I want to have it clear?

A. I said the call came through from the Panhandle through my switchboard in my office. At the time now I have not got a switchboard but I did at that time. To the operator that is in my stand, said "This is Glen at the Panhandle. Will you send a cab up here to go to Wasilla. A man wants to go to Wasilla." And that is the statement I gave you that day. I don't know how you wrote it down but that is the statement I gave to you.

Q. About the 20th day of this month at the Anchorage Motors garage in the presence of Mr.

(Testimony of Frank V. Jones.)

Humphries, myself and other persons being present, did you not state in substance that Glen Phillips called [326] you on the telephone and asked you to send a driver to Wasilla?       A. I didn't.

Q. And that the driver went to Wasilla and brought back some moose meat and put it in Vern Humphries' car? Did you not make that statement at that time?

Mr. Cottis: May it please the Court, I object, Mr. McCutcheon is not only arguing with the witness but he is refusing to take the witness' answers as true on a collateral subject in an attempt to impeach his own witness. The witness has already answered it, and——

The Court: The objection is overruled.

The Witness: I did not answer that in that manner.

Q. (By Mr. McCutcheon): Did a driver go to Wasilla during the month of April, 1948 and pick up something?       A. To my knowledge, yes.

Q. And how much of a charge did you make for that?

A. The trip came to \$52, if I am not mistaken. As you asked me in my subpoena to bring all my records of the cab company over here, they are now loaded on the back of a ton and one-half truck and if you want them I will bring them in and you can look through them.

Q. Did you or did you not on or about the 20th day of June of this month at the Anchorage Motors

(Testimony of Frank V. Jones.)

garage, Mr. Humphries, [327] myself and other persons being present, say in substance as follows: "I charged Glen Phillips and Joe Blackard \$145 for the trip to Wasilla," did you not make that statement?

A. I did not make that statement.

Q. Did you make that statement in substance?

A. I did not make any——

Mr. Cottis: I object. It was not subject to cross-examination and was not under——

The Court: Overruled.

The Witness: I did not make any statement like that at all. If you want me to tell what I made I will tell you exactly what was made to me.

Q. (By Mr. McCutcheon): Who did you charge the \$52 charge to?

A. I did not charge no \$52 charge to no one, but the driver—the driver when he takes a car from my stand——

Q. Just a moment, were you paid for the call?

A. I have never got paid in one matter, no, in one matter, yes.

Q. Have you ever been paid for the call to Wasilla in April, 1948?

A. In April '48 that is what I am trying to get to, if you let me go back to the story I will tell you this thing and get it straight for you.

Q. Were you paid for the call to Wasilla in April, '48? [328]

A. In one way, yes, I was paid; in one way, no.



(Testimony of Frank V. Jones.)

Q. Were you paid anything for it?

A. Not in actual cash, no, I was not, I took it out in eating at Mr. Humphries' restaurant in eating for \$22 in meals I ate up there and that is how I got paid. I have been wanting to go back and tell you the straight story and you can cross-examine and you can cross-examine, if you will let me tell the story.

Q. Just a moment, now on June 20th this year at the Anchorage Motors garage, did you make any such statement to me in the presence of Mr. Humphries and other people being present?

Mr. Cottis: Same objection, Your Honor.

The Court: Overruled.

The Witness: The questions that you asked me at Anchorage Motors and the questions that Mr. Humphries asked me at Anchorage Motors, the first Mr. Humphries came in and asked me if I would come on the witness stand for him to testify that Joe Blackard put some——

Q. (By Mr. McCutcheon): Just answer the question.

A. I am answering the question; that is the only way I know how to answer it for you.

Q. At that time at the Anchorage Motors garage in response to my question "Did Mr. Humphries have anything to do with this?" did you not at that time say "No, nothing whatsoever." Did you not [329] make that answer to that question at that time and place?           A. Do what, no.

(Testimony of Frank V. Jones.)

Q. In response to my question to you "Did Mr. Humphries have anything to do with this trip to Wasilla?" Did you not in substance answer "No, not whatever"?

A. I did not give you any answer at that time of the Wasilla trip.

Q. Now, in July, 1948, at my office in the presence of Mr. Humphries and myself and other persons being present, did you not say in answer to a question if Mr. Humphries had anything to do with the moose meat incident, your answer was "No, nothing at all"? Did you make that answer at that time and place?

Mr. Cottis: Same objection, Your Honor.

The Court: Overruled.

The Court: I gave you that answer in this way "So far as my knowledge, no" at that time, because I had never talked to the driver that hauled the moose meat. I had never got to see the driver.

Q. Did you know that moose meat was hauled?

A. I knew it was hauled after I had talked to you and just before I had talked to you, but I had never got to talk to my driver.

Q. Do you know where the driver delivered it? A. Yes.

Q. Do you know where the driver delivered it? [330] A. Do you want me to tell you?

Q. Yes.

A. The moose meat which was hauled from Wa-

(Testimony of Frank V. Jones.)

silla, I can't tell you the dates by memory because it has been so long, but the time that this moose meat was hauled——

Q. Just answer the question. Where was the moose meat delivered?

A. That is what I am trying to get to. I am trying to bring it back to tell you just exactly where it has been delivered.

Q. Just tell where the moose meat was delivered to Anchorage?      A. 528.

Q. Whose home is at that——

A. Mr. Humphries.

Q. Where else was it delivered?

A. That is as far as I knew Mr. Humphries and the driver took it someplace else.

Q. Was some delivered to the back of the Panhandle?

A. I do not know about the back of the Panhandle.

Q. Was there someone else with the driver at the time?

A. Yes, there was a native man with the driver.

Q. Do you know from whom the moose meat was purchased?

A. It was purchased, I imagine, from this native man in Palmer—In Wasilla.

Q. Did you have occasion to visit the Panhandle in company with three other persons to eat at the Panhandle at 1:30 a.m. [331] on the 5th day of May, 1948, and at that time have a conversation with Mr. Blackard?

(Testimony of Frank V. Jones.)

A. I visit the Panhandle, I can't tell you the date, approximately that is the date, I am not for sure.

Q. What was the conversation you had with them at that time?

A. I went to the Panhandle one night, it was approximately 1:15, maybe later, maybe earlier, I can't tell you, and the door was locked at the Panhandle and I shook the door and Joe came and I says "Are you locked up for the night?" and he says "Yes, I am locked up for good," he says "the restaurant is too." And I say "What is wrong?" and he says "I will let you know later, I don't know yet." And I says "O.K." and I turned around and my other two parties and we turned around and left. We went up there to eat in the Panhandle and the restaurant part was locked and the bar.

Q. Is that all that Mr. Blackard said at that time?

A. As much as I can remember, yes.

Q. Well, during the month of July, 1948, at my office in the presence of Mr. Humphries, myself and other persons being present, did you not say as follows, in substance,—

Mr. Cottis: Your Honor, objection as leading and hearsay.

The Court: Overruled.

Q. (By Mr. McCutcheon): "When we shook the door Blackard came to the door and [332] said 'It is locked up for good. I have closed the restau-

(Testimony of Frank V. Jones.)

rant and it is going to stay closed.' '' Did you not make that statement at that time and place?

A. I probably did make that statement. He probably said it at that time. It has been a year ago. I can't repeat every word a man says.

Mr. McCutcheon: Your witness.

### Cross-Examination

By Mr. Cottis:

Q. Mr. Jones, tell the story if anything has been left out?

A. Yes, there is quite a bit of the story that has been left out.

Mr. McCutcheon: I would like to have it in questions and answers so that I can object, Your Honor.

The Court: Overruled.

The Witness: I can't tell you the direct dates of all of this moose meat stuff and this stuff that has been going on. I could if I got on the back end of this truck that is sitting out here by the Court house and went through the records. It carries back since March, in approximately about the 28th, 29th or 30th of March of 1948 I got a call to send a cab to Wasilla to take a native man out of the Panhandle Cafe and Bar. They asked me if I would send one there. I wasn't at the office and the dispatcher came to send a man over to my room where I was rooming at that time and asked if it was o.k. to send a [333] cab because I do not like to have my cabs leave town without me knowing it and I said

(Testimony of Frank V. Jones.)

“Yes, go ahead and send the competence’d driver, No. 1, Wally Heffner.” So she sent Wally Heffner to pick up the native man, who was pretty well drunk, and he takes him to Wasilla and that was approximately about midnight one night. Eight o’clock in the morning came, no cab back from Wasilla. I got a little worried thinking maybe he run over a hill or slid into a bank because the snow was on the ground.

Mr. McCutcheon: If the Court please. Just a moment. Will Your Honor instruct the witness to testify what he saw and heard in connection with this case and not what other people have told him.

The Court: Confine your testimony——

Mr. Cottis: May it please the Court, the door has been wide open here on conversations and all that sort of thing. Now I am sure that the jury is confused at the moment about what has been going on and I suggest that the witness won’t be hurting anybody if he tells the whole story.

The Court: I am not trying to keep the witness from testifying but he should confine his testimony to his own knowledge. I have said that before in direct examination and I say it again. He has not departed from the rule by saying that he was alarmed because he thought that car might have gone over the bank. Of course that is not testimony but one can understand it. You may proceed. [334]

The Witness: So that following morning about



(Testimony of Frank V. Jones.)

eight o'clock, eight-fifteen, nine o'clock came, the man came back to town, and I happened to be at the L & W having breakfast. The man came in and he says "Frank, come outside in a hurry. I have got to see you," and I said "What is wrong, Wally, what is wrong, did you wreck the car?"

Mr. McCutcheon: Just a moment, if you are about to state what the man told you.

The Witness: I am about to state what I seen, not what the man told me.

Mr. McCutcheon: Very well.

The Witness: So the man says "Come out to the car." It was parked at the bus zone in front of the L & W. And he says "Frank, I have——"

Mr. McCutcheon: Now, just a moment, if the Court please I would like to have the witness instructed that he can't repeat what somebody else told him. It might be highly detrimental.

The Court: Don't repeat what somebody else told you; you can repeat what you saw and did.

The Witness: All right. Furthermore I went to the car in front of the L & W. He opened up the trunk door and said "Look in."

Mr. McCutcheon: Now, you are back to what he said again, Your Honor.

The Court: Overruled. Try to leave out of your testimony [335] what this other man said. You tell what you saw and what you did.

The Witness: So I looked in the trunk and I sees this meat and I says "Where did you get

(Testimony of Frank V. Jones.)

that?" He say "I got it at Wasilla" and the native man was with him and he says "I brought this for a native man back" and he says "I got this meat——"

Mr. McCutcheon: I object to the hearsay, if the Court please. I don't know what the witness is leading up to.

The Witness: This is something you don't know.

The Court: Overruled.

The Witness: So I got this car and I got in the car and he says "Where does Humphries live?" 538 M Street and he says "Take me." So I tell Vern what is in the car and he knows about it because the driver told me and the native man both. So he says "All right, I will meet you at my house" and I said "All right, I will go on back to your house with the cab" and we goes back to the house and he says "Follow me with his car" and we follows him out to 14th and K Street. We takes the moose meat out of my cab, puts it in the trunk of his car and he says "I will see you in one hour" to the driver and me and that was all. That was all, just the driver and me and him. One hour the driver goes back down and Mr. Humphries gives him a check for hauling the moose meat or luggage or whatever you want to call it. The man comes back to the office at noon, gives me [336] my percentage of the trip to the cab company and I takes the car down and has it cleaned up because it was already beginning to thaw in the warm part of the trunk.

(Testimony of Frank V. Jones.)

From then approximately a month or a month and one-half, maybe it was only 29 days, was this other moose meat hauled. The driver takes it to Humphries house, unloads it in the front yard, comes back and says "Vern or so and so owes me for the trip" and I said "You had better get it because I am charging you." And the driver says that Vern said "Joe is going to pay for it." Joe says "I have nothing to do with it; I know nothing about it." And I goes to talk and Joe says "If Vern don't pay you I will" and I charge it back and he pays me back in rent in his house for hauling moose meat and that is the story up to date.

Q. (By Mr. Cottis): Mr. Jones, you say that Humphries paid you for that first trip by check?

A. Yes, he did.

Q. You had occupancy of Mr. Humphries' house, did you? A. Yes, I did.

Q. Were you occupying it when a fire occurred there last fall?

A. I was there myself, yes, sleeping.

Q. Did you know whether there were any records and documents that had been left there by Humphries? [337]

A. Yes, there was records, there was documents, there was all kinds of stuff there in his house.

Q. Where were they, in what sort of containers, if any?

A. Mr. Humphries left in sort of a hurry one night and asked me if I would take him to the

(Testimony of Frank V. Jones.)

'plane. I cleaned the place up, packed the stuff away for Mr. Humphries, his records that I did not look at—I imagine they were records he had that night. We had discussed it a little bit about his home, renting it and taking care of it, and he says “Mr. Jones, if you will live here for ten days I will give you free rent for ten days” and I say—I will tell you what I told Mr. Humphries—“I will give you \$125 for the month for the place and I will take care of it” and he says “Fine.”

I was looking around the house and I seen a filing cabinet and I says “Humphries, how much do you want for that?” and he says “I will sell it to you, I will take \$29 or \$30” and I say “I will buy it” and he gave me the keys and I have got it in my pocket now and the filing cabinet is in my office bought and paid for. I took the paper he had into it and put them into a cardboard box that evening and picked up all the rest of the bills that I found and checks and people’s bills that he owed and put them all in a cardboard box, a box about 18 by 24 and tied it up, put it on the service porch—front service porch—with a bunch of luggage he had left and some other things. And in the house there was nothing burned of records or anything [338] to my knowledge as long as I had the house.

The house was burnt around the chimney and the floor and part of the bedroom but never any records burned or any containers of things. And I understand that I stole that stuff out of his house. I have never stole anything in my house.

(Testimony of Frank V. Jones.)

Q. You mean that the fire didn't injure anything except the chimney? A. That is right.

Q. No documents of any kind were even scorched?

A. Not that I know of, no documents nor any of his luggage was scorched.

Q. Did Joe Blackard ever owe you \$145.

A. Joe Blackard never owed me a dime as long as I know him.

Q. Does Humphries owe you any money?

A. Right at the present moment he does not. I checked back through my books with my wife and at the time I had his house she took off the account of what he owed us.

Q. What did he owe you then?

A. He owed us for that one trip and some charge accounts that his wife had of hauling the kids to and from school, and hauling him from the Panhandle home.

Q. But Blackard had never owed you any money?

A. No, sir, Blackard never owed me any money.

Q. Has Phillips owed you some money?

A. No, sir, Phillips never owed me a dime yet.

Q. Has Starns owed you some money?

A. No, I don't even know Starns. I know of him but I don't know the man in person.

Q. But you are positive that there is no debt for \$145 from Blackard to you and there never has been?



(Testimony of Frank V. Jones.)

A. There never has been. I have never had Joe's name on my books for a charge account.

Q. Well, do I gather now on this moose meat business that there were two trips to Wasilla, is that what you testified? A. That is true.

Q. And how far apart were they in time as nearly as you can remember?

A. I could not specify the correct time. I would say they are about a month apart.

Q. And roughly when was the first one?

A. Roughly the first one was sometime in March or April. It was either the last part of March or April, I couldn't tell you right off the records.

Q. And Humphries has now paid the bills for each trip? A. He certainly has.

Q. Do you know whether Marvin Campbell lived at 538 M Street?

A. No, I could not tell you that. He lives at 538 M Street.

Q. Did you have any conversations with Campbell about these moose meat deals?

A. I have never had any conversations with Campbell sitting [340] there at all, never spoken aye, yes or no to him.

Q. What was this conversation you had with Mr. Humphries and Mr. McCutcheon at Anchorage Motors June 20, 1949?

A. June 20, 1949, I was working at Anchorage Motors on a couple of automobiles and taking care of some automobiles that were having seat covers put on them. Mr. Humphries walks in the door,



(Testimony of Frank V. Jones.)

says "Mr. Jones, when you get done I want to speak to you" and I says "All right." He says "if you will go on the witness stand for me and testify," he says "I will give you \$20 now and I will give you more when I win the trial" and I say "I am not going——" ——I says "I will go on the witness stand but I am not going to testify to any lies or anything else," and he says "You are going to be subpoenaed." "Yes, when you catch up with me you can subpoena me" and they tried for about five days trying to catch me. I have been pretty busy and I am awfully busy now.

Q. This was last week? A. Yes.

Q. Will you repeat again what Mr. Humphries said about money?

A. He said if I would go on the witness stand he would pay me \$20 and when, if he won the trial, he would pay me more. And there were other people present when he said that. I am not for sure that they will get up here and swear either way because they don't want to be mixed up in the trial like I am.

Q. Was Mr. Campbell present?

A. No. [341]

Q. Was Mr. McCutcheon?

A. Mr. McCutcheon was not there at that time.

Q. Are you familiar with Mr. Humphries' reputation for being truthful?

Mr. McCutcheon: I object to that as improper, immaterial and irrelevant, outside the scope of the direct.

(Testimony of Frank V. Jones.)

Mr. Cottis: I am making the gentleman my own witness.

The Court: I think you had better do it separately.

Mr. Cottis: Very well, Your Honor. Never mind, Frank.

Q. What happened to the carton of records and the luggage?

A. As far as my knowledge the records in the house and the carton of records and luggage the time that I moved out of Mr. Humphries' home, I went to the First National Bank, turned the keys—I locked the house up. They were all on the front service porch and there were three packages in the basement. I took the keys, locked the house up and took the keys to Mr. Baker at the bank. And Mr. Humphries had given a set of keys to a real estate agent here in town and all the time that I had lived in the house I had people running in and out unlocking my doors, waking me up at nights and the mornings and finally I put some bars on the doors so that they couldn't get in. But when I moved out all the records and everything in the house, the day I left, everything was there of his records and his luggage.

Q. And when was that that you moved out?

A. Mr. Cottis, I can't tell you the exact date of when I moved out without going to the Light Company and getting my light bill that I paid up to date when I moved out.

(Testimony of Frank V. Jones.)

Q. Can you approximate it within a couple of weeks either way? For example, with respect to the fire, was it after the fire?

A. Yes, it was, it was three days after the fire happened I moved out and I left the driver there to watch the house for temporarily as the firemen asked me to notify if there was any more fires would start in the house where they would have some contact down there, and I let the driver stay there four days and four nights to watch the place until I bought this new home of mine out at 14th and East I Place and I moved him out there with me. He is still boarding with me now.

Q. That would be about October of last fall, is that correct?

A. If I am not mistaken it would be about in October about the middle, maybe a little later.

Q. And no records were damaged by that fire?

A. No, sir, there were no records, there was some stuff in the attic but no records. Here is a statement from Mr. Humphries that I had him to bring out the day he came back to town stating that anything in the house that was missing or lost or stolen was not blamed on to me, and I will give it to the Court or anyone that wants me, and I had him to give me that when I had him to come back to town. He claimed I stole some stuff out of his [343] house and I made him write it out and sign it, and, furthermore, I got a check receipt of \$90 of where I paid him.

(Testimony of Frank V. Jones.)

The Court: I think we had better suspend. Court will stand in recess until 11:17.

(Short recess.)

The Court: Without objection the record will show all members of the jury present. Counsel may proceed with the examination.

Q. (By Mr. Cottis): Mr. Jones, it was a week ago today, that is, on June 20th that Mr. Humphries offered you \$20 and more if he won this case?

A. I couldn't swear it was a week ago, but it was one day last week when I was working on some cars at Anchorage Motors.

Q. Who else was present who heard the conversation?

A. Well, I can't tell you their names, Mr. Cottis, because I don't know the persons' name. There were three people standing by and there was one clerk. They was talking about buying automobiles while they were standing there talking.

Q. Were they employees of Anchorage Motors?

A. One of them is an employee and the other—two of them was people who came in to buy automobiles.

Q. Now, did Humphries ask you to distort your testimony?

A. No, he did not ask me in them words to get up here and distort it or however you want to pronounce it but he asked me to get up here and testify that Joe did this and Joe did [344] and I said "I will be here if you can catch me and subpoena me."

(Testimony of Frank V. Jones.)

Q. What sort of things did he want you to say Joe had done?

A. Well, according to that paper——

Mr. McCutcheon: Objected to as leading.

The Court: Overruled.

The Witness: Wanted me to say that Joe ordered me up there to pick up that moose meat.

Q. (By Mr. Cottis): Is that the truth?

A. No.

Q. Joe had not ordered you up there to pick up the moose meat? A. No.

Q. What did he say, if you recall?

A. He just asked me if I would get there and testify, if I would get up and testify for his sake to win the trial.

Q. Did he go into detail at all about what you should testify to?

A. Well, they went in details of that paper right there and that is as far as they went.

Q. Was there any conversation about Joe Blackard?

A. Yes, there was a conversation about Joe, just as far as what the lawyer there read off on the paper.

Q. Will you tell us again what that conversation was as nearly as you can remember? [345]

A. I can't tell you nearly what it was, Mr. Cottis, because I wasn't paying too much attention to it, to tell you the truth. I was trying to listen to what they were saying and watching the men that I had



(Testimony of Frank V. Jones.)

working putting on seat covers up there at Anchorage Motors at that time on some automobiles that came from the Post and I was a little bit mad when I was up there because they sold me the wrong kind of stuff.

Q. Did Joe or Glen Phillips or Larry Starns, any of them, at any time ever ask you or your company to your knowledge to go get moose meat?

A. To my knowledge Mr. Starns and Mr. Blackard or Glen Phillips did not ask me in person or either to my company. The call came in like I stated, over the switchboard to my company, to pick up a native man to go to Wasilla and that is the way.

Q. A call from the Panhandle?

A. Call from the Panhandle. I am not going to swear whether it was Joe or Glen or Mr. Humphries. They can use any man on the 'phone and I cannot identify it. I don't think there is one man in a hundred that can identify a man over the 'phone and get up and swear to it.

Q. You testified that you went to the Panhandle one day and it was closed, is that right?

A. That is true.

Q. What time of day was that, do you recall?

A. Oh, I can't get it right down to the minute or approximately [346] to the hour because it has been so long but it was someplace around in midnight, around one or two-thirty, I can't tell you the correct answer to that, it was approximately in that time.



(Testimony of Frank V. Jones.)

Q. Can you remember approximately what month?

A. No, I can't, to tell you the truth, I really wouldn't. If I went back over some of this stuff and probably known that I was really coming up here, go over the records and looked it all over and thought maybe I did have to come up here and thought I would have to know, but I didn't pay much attention to it because I didn't want to get mixed up in it any more than I am right now.

Q. Did you eat at Humphries' restaurant frequently?

A. Yes, I ate at Humphries restaurant frequently when he was open and occasionally drank at the bar.

Q. Did you ever see any card games going on there?

A. No, not anytime that I was in there. I was in there at different times but I never looked around to see if they were playing cards. I seen the card tables back there.

Q. How many card tables do you recall?

A. I think there was a couple of them.

Q. Were there more than two?

A. I wouldn't swear to it.

Q. How did you come to be eating at Mr. Humphries' restaurant? [347]

A. Well, the main reason why I was eating at Mr. Humphries' restaurant, he asked me if I would come up and some of my drivers, he was in business again and he did business with us and I figured it

(Testimony of Frank V. Jones.)

was good business to trade with another business man and that is the way we got around town trying to build our business up. That is how I came to be eating in the Panhandle.

Q. Did you testify something to the effect that Humphries owed you a bill and you were running the food at the restaurant against that bill?

A. That is right, I did eat out \$22 and 45-cents, if I am not mistaken,—if I can look—I am quite sure that is just about approximately what it was—in meals and if the tickets he has got them still. Joe, the same thing, I kept them down on a piece of paper.

Q. That \$22.45, if that is correct, was that the bill occurred on one of these moose meat deals?

A. That is true, that was the last trip.

Q. Did Humphries know that you were eating that out?      A. He certainly did.

Mr. Cottis: Your witness.

The Court: Any further direct examination?

Mr. McCutcheon: Yes, Your Honor.

### Redirect Examination

By Mr. McCutcheon:

Q. What was the date of the last trip? [348]

A. That I cannot tell you. I would have to go back over the records and pick up the driver and go back over his cards. Like you asked me to bring the statement of records here, I have got them out here on the truck if you want to go and pick them

(Testimony of Frank V. Jones.)

up we will go down through the months and we will find them. I have got them all boxed up in a yearly report. We can and pick up and go through them and I can tell you the exact date.

Q. Now, do you remember the approximate date of the last trip—the moose meat trip?

A. No, I cannot tell you the approximate date.

Q. Now, was it the last moose meat trip that you ate a meal ticket out at the Panhandle Restaurant?

A. Yes, it was.

Q. It was for the last trip?                      A. Yes.

Q. Did you not in the presence of myself, Mr. Humphries and other people being present about the 20th of June, this year, approximately, did you not say in substance that you charged Blackard and Phillips \$145 for the trip and that they still owed you for it?                      A. I did not.

Q. You did not make such a statement?

A. I didn't not make that statement at all. I said I had charged the trip, but I did not make the statement which way I charged that statement because Joe never did call me. [349]

Q. Did you say \$145 at that time?

A. I said the trip was around one, the bill was around \$100, not the trip.

Q. What was the bill for?

A. The bill was for what Mr. Humphries owed me.

Q. What did he owe you for?

A. On cab riding and on the trip.

(Testimony of Frank V. Jones.)

Q. How much did you charge for the moose meat expedition?

A. I told you what the moose meat expedition was. It came to approximately \$51 or \$52 from the time the man was gone from the office to the time the man came back to the office with the cab.

Q. Now, how many cabs did you send to Wasilla? A. I sent two cabs to Wasilla.

Q. And how much did you charge for it?

A. It depended on how long the man was gone on the trip—the trip to Wasilla.

Q. Just answer the question.

A. The trip to Wasilla is \$45 straight up there with any cab company.

Q. Yes.

A. And it is half fare back, and on the way back on the last trip. You said not to use what was told to me. Well, this is what is told to me.

Q. I don't want any statement as to what somebody else told [350] you.

A. My driver on the other trip brought another fare with him and he was stopped at the M. P. gate and practically didn't make it through the gate with the last trip, so he charged the man who rode back with him half way from Wasilla, he picked him up at Mile Post 32 or 33 from town and brought him to town and charged him \$18.50. So it run the other trip down instead of costing more it runs less when you bring a return trip—a separate fare back. You cannot charge three different peo-

(Testimony of Frank V. Jones.)

ple one fare, you have got to charge them one fare and if you bring another fare back you have got to charge—disregard one and bring it down into the one total fare.

Q. Now did you eat up the \$52.50?

A. I did not, the Panhandle was closed. If it was open I probably would have eat it out.

Q. How much did you eat? A. \$22.

Q. You remember that?

A. It was around \$22—\$21.

Q. Mr. Humphries owes you the difference between \$21 and \$52?

A. He did, he does not. It is all paid up for bills at the house and bills at the N. C. Company which I was at his home.

Q. Didn't you have an argument with Humphries about taking some stuff out of his house?

A. I had an argument with him. [351]

Q. And didn't you bring some things back?

A. I took a big radio that was in his house and let it at Tom's Radio Shop.

Q. And you brought it back?

A. I did not bring it back.

Q. Did you still have some of the things that belong to Mr. Humphries?

A. I do not have anything that belonged to Mr. Humphries except that filing cabinet that I bought and paid for it.

Q. Didn't the United States Marshal pay you a visit with reference to some of the things you took out of this house?

(Testimony of Frank V. Jones.)

A. The United States Marshal did not pay me a visit.

Q. Didn't you take out a radio and some clock?

A. I did not.

Q. And didn't you bring it back?

A. I did not.

Q. And isn't that the time that Mr. Humphries gave you the receipt?

A. That is not the time.

Q. Now, who did you charge the \$52.52 to?

A. I charged Mr. Humphries. He is the one that the cab driver said it was charged to.

Q. Didn't you testify earlier on direct examination that you charged it to the Panhandle? [352]

A. I charged it to Mr. Humphries; I did not say the Panhandle.

Q. You didn't testify earlier that you didn't charge it to any particular person but to the Panhandle?

A. To the Panhandle—to Mr. Humphries.

Q. Charge account. Who did you charge it to?

A. Panhandle on Mr. Humphries' account.

Q. Does that show on your records?

A. It does.

Q. Can you find that entry of the records?

A. If you get right down to it I can find it.

Mr. McCutcheon: We would like to have a recess.

The Court: You had better proceed and look up the papers at the noon recess before two o'clock.



(Testimony of Frank V. Jones.)

Q. (By Mr. McCutcheon): Who was the name of the driver who hauled the moose meat in?

A. His name is Hagil. I think his last name is Hagil and his front name something else.

Q. Who drove the other car?

A. Wally Heffner.

Q. Which trip was that—the last one or one of the other trips?

A. The last trip was charged. The first trip was paid by check.

Q. When was the first trip? [353]

A. Just like I told you before, I can't tell you the correct date on it because when the cabs leave——

Q. Was it six months prior to the last trip?

A. No.

Q. Was it three months?

A. Approximately 30 days, maybe 29, maybe 25.

Q. Who hired you to go to Wasilla? Did you go to Wasilla?

A. I didn't go to Wasilla. My drivers went to Wasilla.

Q. What was your driver's name?

A. Wally Heffner the first trip.

Q. And how much did you charge for that trip?

A. Like I told you I cannot tell you right off the records. I would have to go back and look over his card, what the statement as to you and everyone else, because when a man leaves the stand at six o'clock at night.

(Testimony of Frank V. Jones.)

Q. You don't recall then, is that correct, the amount you charged for the first trip?

A. I can't recall to be right down to true dollars, no.

Q. You do recall that you charged \$52.50 for the second trip, is that correct? A. Yes.

Q. And who requested that you go—where did you get the moose meat the first trip?

A. I didn't get the moose meat.

Q. Do you know? [354]

A. No, I know it was picked up in Wasilla, you said not——

Q. Do you know that it was moose meat?

A. That is what I was told.

Q. You saw it?

A. It still had the skin on it.

Q. You testified you saw it?

A. It had skin.

Q. Do you know it was moose meat?

A. A lot has skin, I don't know it was moose meat.

Q. Why did you assume——

A. Because they told me and you said not to use what they told me.

Q. And you went along with the driver, did you, and delivered it somewhere?

A. I went along with the first trip with the driver and put it out of my cab into Mr. Humphries' trunk.

Q. When was that?

(Testimony of Frank V. Jones.)

A. I can't tell you the correct dates.

Q. Was Mr. Humphries with you at that time?

A. Yes, Mr. Humphries was.

Q. And was that the first trip or second trip?

A. That was the first trip.

Q. Where is this man that drove your cab the first trip, is he here in town?

A. Wally Heffer right now—I have got a letter from the [355] railroad for a recommendation for him to go into some lodges at some lodge. I can't keep up with everyone in town.

Q. Do you know where the driver got the moose meat the first time?

A. They told me Wasilla.

Q. Did anybody call you in connection with that trip?

A. The first trip?

Q. Yes.

A. The first trip I got the same call I got the second trip from the Panhandle Bar. They never called me, they called through the switchboard.

Q. You don't know who called the first time?

A. They called to have a man to send a cab to the Panhandle to pick up a native man. That is the story. I don't know who called, what called or how called, it got there. We took the call the same as any other call that comes through a switchboard.

Q. And you transferred the meat yourself to Mr. Humphries' car?

A. I helped transfer the meat, Mr. Humphries and the driver from my cab into his trunk of his

(Testimony of Frank V. Jones.)

car on 14th and K Streets up there on the triangle, out here on 14th and K.

Q. Now, you know it was moose meat by the appearance of it, is that correct?

A. By the appearance that loading it was moose meat. [356]

Q. What time of the night was it?

A. It was approximately ten o'clock in the morning.

Q. Did you know at that time it was unlawful to have moose meat?

A. At that time I did not know that this was moose meat that was shot out of season or anything. I didn't know what it was about. I didn't even care to know what it was about because it isn't my business looking up the law.

Q. Do you know what type of car Mr. Humphries had?

A. At that time a 1947 or '48 Mercury or Ford.

Q. Didn't you consider it a little irregular to hire you when he owned a car himself?

A. Mr. Humphries did a lot of things with cabs that he didn't do with his own car.

Q. Didn't you think it was a little irregular to be handling moose meat at that time of the night?

A. At that time of the night? It was daytime, ten o'clock in the morning. I didn't go at night. I said at ten o'clock in the morning when I loaded the moose meat out of my trunk door into his and helped the driver and Mr. Humphries, approximately ten in the morning.

(Testimony of Frank V. Jones.)

Q. Did you have any suspicions that it might have been unlawful?

A. No, I had no suspicions until after I got connected.

Q. When did you find out that there was something wrong with [357] the transaction?

A. The transactions after I found out, Mr. Humphries told me about it.

Q. When was that?

A. It was about two hours later.

Q. And then you knew it was illegal moose meat?

A. That is right.

Q. And he told you to keep your mouth——

A. He said, "Keep your mouth shut and don't let anybody know what we did."

Q. Did you keep your mouth shut?

A. Yes.

Q. You didn't report it to the police?

A. No.

Q. You hauled moose meat later on, didn't you?

A. Yes.

Q. And did you know what was going on at that time?

A. I didn't haul, my driver did.

Q. Did you report it to the police?

A. I will give you an answer to that——

Q. The question was, did you ever report it to the police?

A. Yes, it was reported to the State Highway Patrol and my cab was stopped at the M. P. Gate

(Testimony of Frank V. Jones.)

and the only reason they got by they had two passengers in it.

Q. Were you protecting the moose meat venture? [358]      A. No.

Q. You say the cab driver managed to get by?

A. He got by because he had two passengers and it was reported he was coming back from Palmer with moose meat.

Q. And that was the first trip?

A. It was the second they got fouled up.

Q. Did you tell that to the police?

A. I never told.

Q. Did you know it was unlawful?

A. Yes, I knew it was unlawful but not at that time.

Q. Why didn't you report it to the police?

A. It is not my business to go around reporting stuff. Why didn't Mr. Humphries?

Q. Now, when did Mr. Humphries offer you the \$20?

A. He offered me the \$20 the morning you came up there to talk to me at Anchorage Motors.

Q. Where were you when he offered you \$20?

A. I imagine you were outside because I had talked to Mr. Humphries six or seven minutes before you walked in, approximately ten minutes.

Q. Are you sure about that?

A. Well, I am not for positive about the minutes, no.

Q. That took place before I arrived there?



(Testimony of Frank V. Jones.)

A. You must have brought him in the car because you were out to my house too at the same time. [359]

Q. That conversation took place before I arrived?

A. Just before you stepped over there to me or around me.

Q. That is the time he offered you \$20?

A. Yes.

Q. Before I got there?

A. Yes, that is true. I even stated to Mr. Humphries that I didn't want to come up here, too.

Q. When were you first subpoenaed?

A. I was first subpoenaed Saturday evening over here at the Gitchell Corner.

Q. And did you claim that that subpoena was no good? A. Yes, I did.

Q. And was that because you weren't offered your witness fees? A. No, sir.

Q. Why?

A. Mr. Humphries asked if I had change for a \$20 and I said, "No, I don't want your money and I don't want to go to the trial."

Q. The first time you were subpoenaed was when? A. That was the first time.

Q. Was there an attempt—

A. Mr. Campbell came into my cab stand with a piece of paper.

Q. What did he say?

A. He says, "Here," and I said, "You take

(Testimony of Frank V. Jones.)

that paper and go right back to the man you got it from and tell him to keep it." [360]

Q. Do you know what it was?

A. I never asked him.

Q. Did you expect it was in connection with this trial?

A. I didn't expect anything. There is a lot of people comes in that cab stand handing me paper.

Q. Did you later have your wife call Mr. Grigsby about that subpoena?

A. Not until the morning you subpoenaed her over here.

Q. Did you talk to someone with reference to that time?      A. I didn't talk to no one.

Q. Just a moment, did you talk to anyone with reference to the first time you were subpoenaed?

A. I was not subpoenaed the first time. The first time was Saturday.

Mr. Cottis: If the Court please, I can't see the relevancy of all of this subpoena business.

The Court: We have gone far enough. This is just a dead end. It is a side track. What do you want to bring out? What is it that counsel desires to bring out?

Mr. McCutcheon: I appreciate that, sir, what I was trying to show was that when Mr. Humphries offered the witness a \$20 bill it was in accordance with a subpoena and that the witness on a previous occasion had claimed exemption from the subpoena on the ground that he was not offered the mileage as the law requires. [361]

(Testimony of Frank V. Jones.)

The Witness: I did not. I did not require any money at all to come up here.

The Court: Just wait until a question is asked. All right, counsel may proceed, but I think we have gone over it several times.

Mr. McCutcheon: Very well, sir.

Q. Now, you testified, did you not, that Mr. Humphries asked you to distort your testimony, is that what you testified to?           A. I did not.

Q. You did not what?

A. I did not testify any such thing a little while ago.

Q. Well, I didn't mean to put words in your mouth, what did you testify with reference to that?

A. I just said that Mr. Humphries asked me if I would testify on his side to win this case and I will not testify to help anyone win this case. I am up here for the truth and nothing else but the truth. I tried to ditch this 26 times coming up here because I didn't want to get mixed up in this because you went out to my house five times trying to catch me.

The Court: Mr. Jones, you are not here to make speeches.

Q. (By Mr. McCutcheon): Then, Mr. Humphries never at any time requested you to distort your testimony in his favor, is that correct?

A. I don't know if it is correct or wrong, whatever way a man puts it to you it could be either way.

(Testimony of Frank V. Jones.)

Q. Did he ever request you to distort your testimony? [362]

A. He just asked me if I would come up and testify for his sake.

Q. What did you understand as to that?

A. There was a lot I didn't understand until I got to talking about it.

Q. Back in July, 1948, at my office in the presence of Mr. Humphries and myself and other people being present did you at that time offer any information with reference to the first moose meat deal?

A. I did not.

Q. And why not?

A. Because at that time Mr. Humphries only asked me three questions the time I walked up there to your office—three little lousy questions—and you did, too.

Q. And do you remember what those questions——

A. I gave you the answers, you got them on paper but not those same words.

Q. Did you say there were only three questions?

A. I say Humphries asked me.

Q. I asked the rest of the questions?

A. I don't know if it was you or some other lawyer, I don't recollect it. I walked up there and I was walking into a jackpot and he was going to sue me.

Q. Did you not state at that time in substance that Mr. Humphries had nothing whatever to do with it? [363]

A. Not at that time. I said, "As far as I know

(Testimony of Frank V. Jones.)

Mr. Humphries did not have anything to say about it," I said.

Q. Do you now know that he had something to do with it?           A. Yes.

Q. And you didn't know at that time in July, 1948?

A. I didn't know it at that time I was talking to you, no.

Q. I thought you testified just a moment ago that Mr. Humphries told you two hours after the first moose meat deal that it was unlawful and for you to keep your mouth shut?

A. That is true.

Q. Now, which time were you lying—the first time or the second?

A. I have never lied once I got up here.

Q. Which time was it that you——

A. I have been telling the truth every damn——

Q. Now, did you ever see any card games in the Panhandle?

A. I have never seen nothing in that Panhandle.

Q. Did you ever see any pinball machines in there?

A. Yes, I have seen pinball machines and I have seen other things in there.

Q. And were there card games going on?

A. I never seen anything going on back there.

Q. Did you ever see any card games?

A. No, I never seen any men sitting there playing cards, no. I seen the tables but I never seen anyone playing. [364]

Q. Do I understand you now to say that you

(Testimony of Frank V. Jones.)

never at any time saw any card games going on in the Panhandle?      A. No.

Q. How often were you in there?

A. Maybe two or three times out of a day and the night.

Q. And over what period of time?

A. Couple or two or three months.

Q. And you never at any time saw any card games in there?      A. No, because I——

Q. Were you ever there in the evenings?

A. No, not in the evenings.

Q. You testified, did you not, that you didn't know Mr. Campbell?      A. I did not.

Q. Did you ever see him in the Panhandle?

A. I seen him in the Panhandle.

Q. Did you testify on direct earlier that you didn't know Mr. Starns?

A. I do not know Mr. Starns.

Q. You don't know him when you see him?

A. No.

Q. You drive a cab here in town?

A. I do.

Q. Do you know where Fort Starns is?

A. I do. [365]

Q. Have you ever seen Mr. Starns before he bought Fort Starns or any other time?

(No response.)

Q. Did you ever hear of Mr. Starns?

A. I have.



(Testimony of Frank V. Jones.)

Q. You have never discussed this lawsuit with him?      A. No.

Q. Have you discussed this lawsuit with anyone?

A. I have not.

Q. Have you ever talked to Mr. Cottis about it in Mr. Cottis' office?

A. I have never been in Mr. Cottis' office. I was up to Mr. Cottis' office once and that was a month ago to pay him \$1,325 and that is the only time I have been in Mr. Cottis' and Hellenthal's office in over a year.

Q. Well, congratulations.

Mr. McCutcheon: Your witness.

The Court: Any further cross-examination.

#### Recross-Examination

By Mr. Cottis:

Q. What was the nature of the note that you owed me, Mr. Jones?      A. Mr. Cottis——

Mr. McCutcheon: Objected to as immaterial.

The Court: It was brought out on cross-examination. [366]

The Witness: The note I owed Mr. Cottis was \$1325 on a 1947 DeSota Suburban that I bought from him in 1948 and it declared I would pay him in 1949 the balance of the \$1325, as I did.

Mr. Cottis: No further questions.

Mr. McCutcheon: That is all.

The Court: Now, does counsel want any rec-

(Testimony of Frank V. Jones.)

ords? If so, it can be searched out perhaps by the witness during the noon recess.

Mr. McCutcheon: If the Court will examine him after recess, I think I have time for one short witness before noon, Your Honor.

The Court: That is what I anticipated, if you will state the papers that you want perhaps the witness will be able to find them and you will not have to take up the time of the Court in searching voluminous records.

Mr. McCutcheon: Yes, I would like to have the witness find in his records, if he can, all the entries that pertain to purchase of moose meat in the year 1948 by anyone.

The Court: Transportation of moose meat?

Mr. McCutcheon: Yes, sir.

The Witness: Your Honor, may I state this specific way, that when a man leaves the cab stand at night with a car he is charged \$6 an hour with that car from the time he comes to work until he leaves and if the man does not make \$6 an hour with [367] that car when he is on the stand sitting on these corners or sitting in the alley where we have control of him, we only charge him what he uses that car for and the records will show to my knowledge here—I haven't looked at it—but with the dispatcher whenever the car goes on charter just marks the car is on charter and it does not specifically state where that car went because you don't know.

The Court: Am I to conclude from what you say

(Testimony of Frank V. Jones.)

it would be difficult if not impossible to find it on your books the records of these trips to Wasilla?

The Witness: It wouldn't show Wasilla and it would show a charter and I can get the driver in here too if I can find him in the next twenty—I will go down and find him—the man who makes the second trip.

Mr. McCutcheon: We have the driver subpoenaed and I assume he is in the witness room.

The Witness: He is here and he can give his testimony how much it made and I think it can be straightened and I will bring his cards in from March 1st until July—from the time the man quit working for me and went to Red Cabs—and I will bring Wally's in from the first day he worked for me until the third day.

The Court: Just segregate anything that may have particular bearing on the testimony here so that we won't have to take up the time of the Court in searching a lot of cards. You [368] can put clips on those which may have reference.

The Witness: I will cut it down to the closest three days of where the trips were made.

The Court: Does counsel want the account of Mr. Jones with Mr. Humphries, any statement of that?

Mr. McCutcheon: At this time, if the Court please, I will withdraw my request. I don't believe the records will show.

The Court: All right, that is all, Mr. Jones, if

(Testimony of Frank V. Jones.)

you will return at two o'clock and have those cards available.

Mr. Cottis: Your Honor, if there are any accounts between Hy's Cabs and Mr. Humphries I should like to have them.

The Court: Very well.

The Witness: I will bring the charge account of the first day.

Mr. McCutcheon: If the witness is excused——

Juror: Did you see any of the moose meat on the second trip?

The Witness: Yes, I did.

Juror: You saw some of the moose meat on the second trip?

The Witness: On the second trip, yes, and I knew then what it was, but I am in business like everyone else and we can't—I was over the barrel—you might as well say I was over the barrel and hung before it was proven.

The Juror: You saw the moose meat?

The Witness: I saw both loads and I know what I am talking [369] about and I have not told a lie since I have been here.

The Court: That is all, Mr. Jones.

Mr. McCutcheon: Will the Bailiff call Mr. Robinson?

The Court: Mr. Robinson may be called.

HOWARD ROBINSON

called as a witness, having been duly sworn, took the stand and testified as follows:

Direct Examination

By Mr. McCutcheon:

Q. Will you state your name please and spell your last name for the Clerk?

A. Robinson, Howard, R-o-b-i-n-s-o-n.

Q. What is the nature of your business here in Anchorage?      A. I have a photo studio.

Q. And did you have occasion during the month of March, 1948, for advertising purposes to take some pictures of the Panhandle premises?

A. Yes.

Q. I hand you four pieces of paper and ask you to identify them, if you can?

A. These are photographs that I took of the Panhandle.

Q. And you took them yourself, did you?

A. Yes.

Q. And these are the prints from the original negatives, I assume? [370]

A. These are prints from the original negatives.

Q. And did you make these prints yourself?

A. No, one of my employees made them.

Q. Do those photographs represent a true likeness of the premises in March, 1948?      A. Yes.

Mr. Cottis: Mr. Robinson, were these pictures all taken on the same day?

The Witness: Yes. I thought that one outside

(Testimony of Howard Robinson.)

I thought I might have got that one day but as I recall they were all taken the same day.

Mr. Cottis: Do you recall what day that was?

The Witness: I can only recall it from the standpoint it was right around the first of March, I don't know exactly the day.

Mr. Cottis: Do you know whether or not it was when the Panhandle opened?

The Witness: It was right shortly after within a short time after that.

Mr. Cottis: Were the pictures posed, Mr. Robinson?

The Witness: Not necessarily, just got up there and took them as the conditions were.

The Court: Is there objection?

Mr. Cottis: Do you know who the three children are in this picture? [371]

The Witness: No, I don't.

Mr. Cottis: I have no objection, Your Honor.

The Court: They may be admitted and marked appropriately as Plaintiff's Exhibits. I think they will be 12, 13 and 14.

Mr. McCutcheon: Under the rule they must be shown to the jury at this time, is that correct, Your Honor?

The Court: Unless the showing is waived. Does counsel waive the showing of the pictures at this time?

Mr. Cottis: I would like the jury to see them at this time. They might want to inquire further from Mr. Robinson about them.



(Testimony of Howard Robinson.)

The Court: All right, they may be shown.

Mr. McCutcheon: I would like to ask one more question of the witness.

Q. Did you see any card tables in the premises at the time you were in there? A. Yes.

Mr. McCutcheon: No further question.

Cross-Examination

By Mr. Cottis:

Q. Where were the cards and tables, Mr. Robinson?

A. I didn't say cards, I said card table, I think was the question.

Mr. McCutcheon: That was the question.

The Witness: I didn't see any cards. I saw the tables. [372] They were in the back part of the room past where the lunch counter.

Q. (By Mr. Cottis): How many of them were there? A. I can recall seeing two.

Q. You cannot recall seeing three then?

A. No, I do remember seeing two.

Q. Were there any people playing cards at those tables? A. Not while I was there.

Q. Were there any decks of cards visible on them? A. No.

Mr. Cottis: No further questions.

The Court: If the jurors have any questions to ask the witness they may ask them.

Juror: I don't have a question to ask the witness but there was some discussion about a cafe

(Testimony of Howard Robinson.)

sign being in there at the time of opening and I don't see it.

The Court: What was it?

The Juror: There was some reference to a cafe sign being taken down and I don't think——

Q. (By Mr. Cottis): Do you recall a cafe sign?

A. There is in the front, but the neon sign that was hung in the window——

Q. Do you recall anything like that, Mr. Robinson? [373]

A. No, I wouldn't probably notice it, because I don't recall.

The Court: What you saw is what appears in the pictures, is that right?

The Witness: That is right.

The Court: I think you will have to ask the question of some other witness, Mr. Gerstenfeld.

Mr. Cottis: Your Honor, would it be possible to obtain at this time some estimate of the number of witnesses which remain yet for the plaintiff?

The Court: Perhaps counsel for plaintiff can tell us.

Mr. McCutcheon: Seven.

The Court: Seven more witnesses. Well, it is obvious we will not be able to finish the case today. How many witnesses will there be for the defendant?

Mr. Cottis: I am afraid, Your Honor, there will be in the vicinity of ten and possibly more.

The Court: That is what we are here for, to try

the case. Have the jurors any questions to ask this witness?

(No response.)

The Court: If not the witness will be excused and the trial will be continued until two o'clock this afternoon. The jurors will report at two. In the meantime, ladies and gentlemen, you will observe your duty not to discuss the case among yourselves or with others and not to listen to any conversation about it and not to form or express an opinion until [374] it is finally submitted to you. The Court will be in session at 1:15, but you are to return at two and we will proceed with the trial.

(Whereupon, at twelve o'clock, noon, the trial was recessed until two p.m. the same day.)

### Afternoon Session

The Court: Roll of the jury may be called.

(Jurors names were called and responded to.)

The Clerk: Jurors are all present, Your Honor.

The Court: Another witness may be called.

Mr. McCutcheon: Call Mr. Castilio.

Mr. Cottis: Your Honor, I understood that Mr. Jones was to be called at two o'clock.

The Court: I believe it would be better to have Mr. Jones return to the stand and finish up with him before proceeding with any other witness unless there is some special reason that this witness has to be heard now.

Mr. McCutcheon: Not necessarily, if Mr. Jones is available.

The Court: Is there any objection to this witness hearing what Mr. Jones has to say?

Mr. Cottis: I have none, Your Honor.

The Court: Counsel for plaintiff may examine further.

### FRANK V. JONES

called as a witness, having been previously sworn, resumed the stand and testified as follows:

#### Redirect Examination

(Continued)

By Mr. McCutcheon:

Q. Mr. Jones, have you searched your records in pursuance to the request of the Court? [376]

A. I have.

Q. What do you find?

A. I have got the two cards of the 9th of the morning of Cab No. 3—unfinished card—and the card of April 1st, 1948.

Mr. Cottis: I didn't catch the date of the first?

The Witness: April 1st.

Mr. Cottis: What was the first?

The Witness: First one was 1948, April 1st. The second one is the 12th of April, 1948, at eight thirty in the morning when the man checked out from the stand. He never finished filling his card out at all because it was an un-paid-up.

Mr. McCutcheon: I will offer them in evidence.

The Witness: That is the way the boys take

(Testimony of Frank V. Jones.)

care of their cards when driving. The other card has not been filled out because the card was not paid for or nothing was done for it so the man was out.

Mr. Cottis: Are these what are referred to as dispatch sheets?

The Witness: Those are referred to before we were requested to carry dispatch sheets. That is our trip cards. That is what we had until 19—I will tell you the direct date of when the law came into effect that we were supposed to carry our radio log and I have got them from that day on but it don't refer to this trial at all. The radio log of radio operated license of Radio Cab, September of 1948, September 30th. That [377] is the day that we started carrying a radio log dispatcher's sheet. Before then we carried a card that the driver made out himself.

The Court: Is there objection?

The Court: They may be admitted in evidence and appropriately marked Plaintiff's Exhibits 15 and 16, I assume.

The Clerk: Yes, sir.

The Court: And may be read to the jury. What is the name of those cards? Have they any special name?

The Witness: Their names are trip cards, driver trip card, that is a card that the driver keeps himself.

The Clerk: Monday, April 1st, Your Honor, will be Plaintiff's Exhibit 15.

(Testimony of Frank V. Jones.)

The Court: Yes, will be 15.

The Clerk: And the one dated April 12th is Plaintiff's Exhibit 16.

The Court: April 12th will be Plaintiff's Exhibit 16.

Mr. McCutcheon: Plaintiff Exhibit No. 16. In the upper left-hand corner in printed words: In 15345, 8:30 p.m. Out 15478. Driver Hilgilien.

The Witness: That is the driver's name, Hilgilien. That is his correct name.

The Court: What is his name?

The Witness: I will let the attorney pronounce it because he has got the card. [378]

Mr. McCutcheon: H-i-l-g-i-l-i-e-n, not Hagil, is his correct name.

Car No. 3, date 4-12-48. From Anchorage. Time blank. To Wasilla. Time blank. Cash blank. Underneath it in the second line: Panhandle 10-c. \$1. Depot time blank. Mountain View Time blank again. Cash \$2.

Plaintiff's Exhibit 15 is a card similar to Exhibit 16. At the top of the card, left hand side: In blank. Opposite on the cord: Out blank. Driver Wally. Card No. blank. Date: April 1. From stand Time 6:55 to City Time 7:00. Cash \$1. And the next line: 967 Room F. Time 7:11 to City. Time 7:45. Cash \$3. Stand 8:07 City 8:13, \$1. Jerry 8:25 9:08, \$3. 937 8th 9:11 City 9:18 \$1. Stand 9:41 City 9:50 \$1. From blank 10:05 gas & eat 10:40. Anchorage Hotel 10:40 City 11:05 \$2.00.



(Testimony of Frank V. Jones.)

Stand 11:13 City 11:20 \$1. Stand 11:31 City 11:37 \$1. Stand 12:01 City 12:07 \$1. Stand 12:08 City 12:36 \$3.00. Stand 12:53 City 1:00 \$1. Stand 2:20 Charter 9:40 \$42. Total \$61.00 Paid \$33.55.

Q. Now, did you find anywhere in your records, Mr. Jones, where a charge was made to Mr. Humphries for a trip to Wasilla?

A. I will answer that in this manner, if you don't mind——

Q. Can you answer it yes or no?

A. It has to be answered in the way that I am going to answer it or I can't answer it for you. Is that straight enough? [379]

Q. Well, not exactly. Did you find in your records anywhere where you had made a charge to Mr. Humphries for a trip to Wasilla?

A. I am answering it right straight, just as straight as possible.

Mr. McCutcheon: I would like to have the witness answer that question yes or no.

The Court: Can you answer?

The Witness: I can answer it this way—if he can't—it has got to be brought out. On the witness stand you want the truth and nothing but the truth, let's have it. On the night of December 30, 1948, Mr. Humphries came to my office——

Mr. McCutcheon: Just a moment, I have asked a question that I believe that can be answered yes or no.

The Court: The witness says it cannot be an-

(Testimony of Frank V. Jones.)

swered yes or no. I don't know what he has in mind.

The Witness: December 30, 1948, Mr. Humphries came to my wife. She gave Mr. Humphries the credit slip, charge account.

Q. (By Mr. McCutcheon): Does that show on the record? Are you reading from the record?

A. I am giving you right straight from the shoulder.

Q. Are you giving me that information from the record? From your records?

A. I cannot give it to you because the charge account slips— [380] when the account was paid up in full Mr. Humphries got the records. I have nothing on Mr. Humphries.

The Court: Never mind, don't make any speeches.

The Witness: I answered it, Mr. Humphries has them records when he paid that account in full that night of September 30, 1948, just like he says everything else is lost.

Q. (By Mr. McCutcheon): Will you answer my original question, please?

The Court: Counsel had better restate it.

Q. (By Mr. McCutcheon): Do your records disclose anywhere where you charged a trip to Wasilla to Mr. Humphries?

A. My records do not show nothing right at the present moment because we gave all that credit account and records to Mr. Humphries. Does that answer it enough? We haven't got the record.

(Testimony of Frank V. Jones.)

The Court: Mr. Jones, please obey the admonition of the Court and don't do anything except answer the questions. You are attempting to make continual speeches here to the jury. The Court is willing to be tolerant of a witness but at the same time you have got to obey the procedure in the Court, too.

The Witness: Your Honor, I don't know how I can answer that question.

The Court: The question was whether you had any record; your answer to that is no. Then content yourself. If the [381] other counsel wishes to bring out anything he can ask you further questions.

Mr. McCutcheon: No further questions.

The Court: Does counsel for defendant care to inquire?

#### Further-Recross-Examination

By Mr. Cottis:

Q. Mr. Jones, were any of your records missing?

A. No, sir, none of my records were missing.

Q. Well, will you tell the Court what happened on December 30, 1948, with reference to these records?

A. December 30th, 1948, evening, possibly about six o'clock-seven thirty, Mr. Humphries came to my office and wanted to straighten up our bill—I should say, if that is straight enough—he claimed I owed him some money and I claimed I didn't. He figured on a piece of paper and I figured it and when it came to the house rent for the months I

(Testimony of Frank V. Jones.)

lived in the house and the bills I paid for him at the N. C. Company, it figured out that I did owe him, I believe, if I am not mistaken, and I am not going to state this as a bare fact, to \$90, that I gave him a check for. He writ this out himself and shown that I gave him—of all the accounts of trips that we kept on his wife, his kids, the trips we made in cabs for him, we kept it on a little pad that is in a regular charge account, and we gave him—to him. My wife stated to me the day that we gave that to him the night we straightened up this bill.

Q. May I see that bill?

A. This is the same thing we read before. He got his full bills of everything we had on him at that time. We never keep no copies when a man pays his bills he gets everything owing to him. That is, we don't have anything on the record for that account.

Mr. McCutcheon: Were you using that paper to refresh your memory?

The Witness: No, sir.

Mr. McCutcheon: May I see it?

The Witness: You may have it.

The Court: The other counsel is examining. I beg your pardon. I apologize.

Q. (By Mr. Cottis): Then, Mr. Jones, it is your normal custom, is it, that when a customer pays up a charge account all records of that account are turned over to him?

A. That is true, his account is closed out. He

(Testimony of Frank V. Jones.)

gets his full accounts. We have no records on that man after that or of any air lines when we do business with, when they pay their monthly bill we send them a statement, and all the trip cards all—we send it to them to verify their own records. The same as we did Mr. Humphries.

Q. Did you find any evidence of any payment by Mr. Humphries to Hy's Cab? [383]

A. No, sir, I did not find that payment because I went to the bank and asked them if they could give me the day that I cashed that check, and Mr. George Mumford at the bank says "I cannot give it to you." I was up there during the recess of the noon hour trying to get it.

Q. Did he state any reason why he could not give it to you?

A. He stated at that time they did not have a log. I told him the day I cashed it and he said it could—he said his account was mislaid and they couldn't tell just when it did go through.

Q. Are you certain in your memory that Mr. Humphries either by credit arising out of the house rental proposition or by check paid you for both these moose meat trips?

A. He did specifically know that he paid for both of these trips. He was told that night in the office the night before that the time up in his restaurant because the driver and me both were kicking about that money, because those cars take money to run those automobiles. On those trip cards you will see the mileage that man left town



(Testimony of Frank V. Jones.)

in the morning and when he got it back. It was not put there with my hands and if you will call the driver he will testify to it. The mileage is at the top of the card—that first card that he read off.

Q. On plaintiff's Exhibit 16, one dated April 12th?

A. April 12th, the mileage was 15,345 miles. That is when he left Anchorage. He made one trip to the depot and one to [384] Mountain View and then he went to Wasilla. His mileage when he got home that evening was 15,478 miles. Figure it out.

Q. Now, under the column entitled "From" is the word on the top line "Anchorage" and then under the column entitled "To" is the word "Wasilla" also on the top line?

A. That is right, he went to Wasilla.

Q. The next entry in the "From" column is "Panhandle" and the corresponding entry under the "To" column is "10-c." What does that indicate?

A. 10-c. He went to 10th and C. I don't know why the man went to 10th and C. He still had this native that he hauled the moose meat with in the car. They went to 10th and C for some reason and they went to the depot for some reason. That is all I know. If the man was here I think he could verify the same statement I am making.

Q. On Plaintiff's Exhibit 15, which is dated April 1, the only entry which is entitled "Charter"?

A. Charter. This trip as far as I know is cor-



(Testimony of Frank V. Jones.)

rectly—I tried to check back. You understand we carry another card like this with the dispatcher and it checks the same thing. The driver took off at 2:20 in the morning from the Green Lantern. He came to town, picked up the native at the Panhandle, I understand, and the amount came to \$42 charter the time he left until the time he got back.

Q. And that was charged to Humphries? [385]

A. The whole thing run \$61. He paid me \$33 for the trip up there—the driver.

Q. That is figured on a percentage, is it?

A. That is figured on 45 per cent.

Q. You as the owner of the cab was entitled to——?

A. 45 per cent of what the man makes. I furnish the gas, oil and the repairs on the car.

Q. And then the driver kept the remaining 55-cents?      A. That is right.

Q. Has Joe Blackard ever at any time chartered a cab from you?

A. Not to my knowledge he has never chartered a cab from me.

Q. Has Glen Phillips?      A. No, sir.

Q. Has Larry Starns?

A. I don't even know Larry. He has not charged a—chartered a cab from me.

#### Further Redirect Examination

By Mr. McCutcheon:

Q. How much did you pay Mr. Hilgilien?

A. Mr. Hilgilien has never got paid for his trip.

(Testimony of Frank V. Jones.)

Q. Do you now owe him?

A. I do not owe Mr. Hilgilien.

Q. Did Mr. Humphries pay you for both trips?

A. That is right. [386]

Q. And you didn't pay Mr. Hilgilien?

A. No.

Q. Didn't he drive the car?

A. No, sir, I do not owe Mr. Hilgilien.

Q. How come?

A. Because I did not charge Mr. Humphries the full amount for that trip. I charged him exactly what was coming to me and I told Mr. Hilgilien to get the rest from Humphries, that I was trying to get my part of it. I could not afford to have my car leave town, pay the gas. Does that answer? I am not responsible for the drivers of collecting their fares.

Q. You say Glen Phillips never chartered one of your cars?

A. Not to my knowledge Glen Phillips has not chartered one of my cabs.

Q. Has he ever hired one of your cabs for somebody else?

A. I would say yes they have hired them to take someone from the Panhandle. We have had calls to come to the Panhandle before to pick up passengers—drunks.

Q. Did Glen Phillips ever hire you to go up and get some moose meat?      A. No, sir.

Q. In the month of July, 1948, at my office in the

(Testimony of Frank V. Jones.)

presence of Mr. Humphries and myself and other persons being present, didn't you say in substance as follows: "Glen Phillips called and asked if I would go to Wasilla and bring back some stuff and it later turned out to be some moose meat" did you not at that time and place say that?

A. I did not state it that way. I did not interpret it to you that way. You might have written it down that way.

Q. Did you ever receive a 'phone call from Mr. Blackard with reference to moose meat?

A. No, sir, I never received any 'phone calls from Mr. Blackard asking me to get moose meat.

Q. Did you ever receive any 'phone calls from him?

A. I have received 'phone calls but not for moose meat. I have had him call to me occasionally about a driver being up there drinking, something like that yes, same as any other bartender—bar owner.

Q. Did you in answer to a question by one of the jurors not say that you saw the moose meat the second load—the second trip?

A. I did, sir.

Q. Where was that?

A. I seen it in the back of my cab behind my cab stand on 713½ Fourth Avenue in the Richmond Bar liquor lot.

Q. Who was there?

A. The driver and the native.

(Testimony of Frank V. Jones.)

Q. And what was the driver's name?

A. Hilgilien.

Q. What was the Indian's? [388]

A. I do not know the man's name.

Q. Have you ever seen him before?

A. I seen him twice.

Q. Now did you ever have a discussion with Mr. Blackard with reference to that moose meat?

A. I did not have any discussion with Mr. Blackard over any moose meat.

Q. Do you know where the driver took the moose meat?

A. Yes, where he told me he took it, but you don't want——

Q. Do you know where he took the moose meat?

A. Where he told me he took it.

Q. What was the purpose of the cab stopping there and you looking at the moose meat?

A. The purpose was he couldn't find Mr. Humphries.

Q. You are sure about that?

A. That is right, that was what the native told me and himself, too.

Q. You are back to about what somebody else—you are pretty careful not to say a minute ago what somebody else said. All right. Now, what occasioned you to look at the meat?

A. They asked me to come out to the car.

Q. And look at the meat?           A. No.

Q. Did you look at the meat?

A. Yes. [389]

(Testimony of Frank V. Jones.)

Q. Why?

A. Because I wanted to see what they had in the car.

Q. What did they have in the car?

A. A shovel.

Q. What else?           A. A pick

Q. Did they have any moose meat?

A. Yes, I looked at it.

Q. Do you know moose meat?

A. Yes, it had the skin on it.

Q. What time of year was it?

A. Just as I stated right there.

Q. What time of year was it, then?

A. It was on the 12th.

Q. 12th of what?

A. It was 12th of April and it was about 4:30 or 5:00 in the afternoon.

Q. And did you know where the driver was hauling it to?           A. I did not.

Q. You didn't know where he was going with it?

A. No.

Q. Do you know where he had come from?

A. Yes, I knew.

Q. Didn't you suspect something wrong about having moose meat in the car at that time of the year? [390]           A. Yes.

Q. Was the meat frozen?           A. Yes.

Q. Frozen solid?

A. It still had snow on it and it was dripping in the car.

(Testimony of Frank V. Jones.)

Q. Didn't you suspect something was wrong at that time?      A. I suspected it a little.

A. I suspected it a little.

Q. You knew there was something wrong?

A. I didn't know; I suspected but I didn't know for sure.

Q. Did you make any attempt to find out if anything was wrong?

A. I did, I asked the M.P.'s at the gate.

Q. What did the M.P.'s tell you?

A. They said they were going to stop a Hy's Cab for hauling moose meat.

Q. And what did you tell them?

A. Go ahead, I am behind you.

Q. When you found out there was moose meat did you tell the M.P.'s?      A. I did not.

Q. Did you tell Holger Larsen?

A. I discussed it with the sergeant on the Post.

Q. What is his name?

A. I do not know, and he said "If I ever catch them going through the military reservation I will get them." [391]

Q. And you were behind that?

A. I told the driver, Hilgilien, to never do it again.

Q. Did you tell him the first time?

A. I didn't know Hilgilien was going off.

Q. Was this the first or second?

A. It was his first trip and Wasilla trips.

Q. He did it again?      A. No.



(Testimony of Frank V. Jones.)

Q. How many trips were there?

A. There were two trips and two drivers.

Q. You did—did you attempt to head off the second trip?      A. I didn't know about it.

Q. You charged Mr. Humphries for it?

A. That was after it was done.

Q. Did you tell any policemen?

A. I never talked to any policemen, I told you the first time.

Q. Now, did you later have a discussion with Glen Phillips? By "later" I mean within the next few days, about this moose meat deal?

Mr. Cottis: The question isn't clear to me.

Mr. McCutcheon: I will restate it.

Q. In the past several weeks, Mr. Jones, have you had occasion to talk with Mr. Phillips—Mr. Glen Phillips—with reference to hauling moose meat for somebody? [392]

A. I had talked to Mr. Phillips but we never, as far as I know, discussed moose meat, no.

Q. Did you talk to him about this case?

A. He discussed it to me about—how was it—I can't repeat the words—he said "Well, I guess they got you, too. I am going up, too" and I said "They haven't got me because they haven't caught me."

Q. When was that?

A. That was the same night you were out to my house about midnight.

Q. You did see Mr. Phillips?      A. Yes.

Q. You did discuss this case?

A. I admitted once I didn't discuss the case.

(Testimony of Frank V. Jones.)

He said "I guess they got you" and I just walked on.

Q. Where was this conversation?

A. I was walking down the street, I think, between here and the Smart Shop. I was——

Mr. Cottis: Your Honor, I fail to see the relevancy and I object.

Mr. McCutcheon: I think the witness is lying, your Honor.

The Court: Now, wait, wait, that is out of order, counselor.

Mr. McCutcheon: I apologize.

The Court: Jury will disregard the statement of counsel [393] and upon argument counsel may within limits, of course, state their views. But in cross-examination of a witness it isn't fair nor in the direct examination.

Mr. McCutcheon: Your Honor, I feel that the witness is testifying falsely.

The Court: That is out of order too.

Mr. McCutcheon: Well, then, your Honor, I feel that the witness has at some other time made statements inconsistent with his present testimony.

The Court: That is very well; you haven't been stopped as to inquiring about that.

Q. (By Mr. McCutcheon): Now, do you recall when Glen Phillips called the cab stand? Did you say that you had a dispatcher that took the call?

Mr. Cottis: There is no evidence that Mr. Phillips called the cab stand.

The Court: He——

(Testimony of Frank V. Jones.)

Mr. McCutcheon: He testified to it.

The Court: You may ask him if he testified to it but it isn't proper to assert as a fact that he did so testify.

Q. (By Mr. McCutcheon): Did you not testify that your dispatcher took a call from Glen Phillips?

A. I did not specifically state that Glen Phillips called. I said I could not identify it and I don't think the dispatcher [394] can. The call came through a switchboard. At this time I have no switchboard, I have nothing but straight 'phones.

Q. Then in July, 1948, when you told me that Glen Phillips called you that was incorrect, wasn't it?

A. I told you in this matter the day I was at your office and Mr. Humphries was with you and I forget who else. I think—I don't know who else was there.

Q. Did you not at that time and place——

Mr. Cottis: Your Honor, I ask that the witness be permitted to answer these questions.

The Court: The witness was——

Mr. McCutcheon: He makes a speech.

The Court: No, not always, occasionally he does. Have you finished?

The Witness: He don't want me to make a speech.

The Court: Just answer the question.

The Witness: No.

Q. (By Mr. McCutcheon): No, what?

(No response.)

(Testimony of Frank V. Jones.)

Q. You didn't at that time say in substance in my office in July of 1948, say that Glen Phillips called you and asked you to go to Wasilla and bring back some stuff and it later turned out to be moose meat? You mean you didn't say that?

A. I didn't say it to you in those words—in the words you [395] are reading off in that paper.

Mr. Cottis: Your Honor, the witness has denied that several times and I object, it is a method of trying to impress the jury. It is in the record three times.

The Court: It has been gone over so often that the Court must preclude any further examination as to that particular question.

Mr. McCutcheon: Very well, sir. No further questions.

The Court: Any further cross-examination.

### Further Recross-Examination

By Mr. Cottis:

Q. Is there any part of your testimony that you just gave that you want to explain or elaborate on?

A. Yes, there is, Mr. Cottis, I would like to explain one item.

Q. Go ahead.

A. The day I walked up into this gentleman's office with Mr. Humphries I said about half a dozen words and Mr. Humphries said the words and just the statement that he read Mr. Humphries spoke out of his own mouth—no, not in that way. I have

(Testimony of Frank V. Jones.)

got a switchboard and I don't know for sure where the call came from. I can't specifically say who gave it to me but they said their name was Glen Phillips, and I cannot prove that on the witness stand to anyone.

Q. Did Mr. Humphries at that time make you any offer of any [396] money to testify?

A. No, sir, he did not.

Q. When did you take possession of his house?

A. I cannot tell you the correct date, Mr. Cottis, at all because I don't specifically know just what day I did move in there or what month but it was right at the time I got Mr. Humphries out on the sly at midnight at night on a plane. He was sneaking out of town, wanted me to get him out and I got him out.

Q. Wasn't that prior to July, 1948?

A. I believe it was, sir.

Q. Actually was Humphries in town at all during July of 1948 that you know?

A. I couldn't swear to that at all.

Q. Are you sure that Humphries was present at this conference that Mr. McCutcheon talks about in July of 1948?

A. In his office?

Q. Yes. You are sure Mr. Humphries was present?

A. Yes, he was present.

Mr. Cottis: No further questions.

The Court: That is all.

Juror: Mr, Jones, did you say you saw the second load of moose meat unloaded from your car?

(Testimony of Frank V. Jones.)

The Witness: I did.

Juror: Did you tell where it was? [397]

The Witness: If I may answer it this way, I could tell you exactly. This is it. I am not making any speeches to help myself or anyone else but I don't know how to bring the stuff out any other way. The man took the moose meat and he asked me where Mr. Humphries or Joe Blackard and I said "Go find either one of these and get rid of it and don't do it again." So I took another cab and followed him and he went straight with this native to Mr. Humphries' house and unloaded on the back porch on a cement porch out there and left it, as far as my knowledge, because I drove away when I seen what he was doing. I drove back to the cab stand and the man came back to the cab stand about two hours later.

The Court: Any other juror have a question?

Juror: Did you say you were looking for either Mr. Humphries——?

The Witness: The driver was looking for either one of them. This native man, as I understood, wanted one of them and he wanted Humphries or Joe. The driver wanted one of them to pay him. He didn't care who paid him as long as he got the money.

Juror: In other words you found Humphries instead of Blackard?

The Witness: No, no, I don't want you to get it that way. No, I didn't find——

Juror: The driver—— [398]



(Testimony of Frank V. Jones.)

The Witness: No, the driver knew where Humphries lived. He had took Humphries home different times from the Panhandle and from the cafe. He used to run down here at the railroad.

Juror: Wasn't Mr. Humphries the receiver? Was Mr. Humphries there to receive it?

The Witness: That I cannot say because I don't know. I do know that Mr. Humphries knowed that the stuff was coming in. It is nothing to be ashamed of. I am up here to tell the truth and nothing but the truth and Mr. Humphries asked me to come up here to come up being on his side. I am not on Joe Blackards or Humphries. I am not. I dodged this for nine or ten times being subpoenaed. I didn't want to come up here and get——

Juror: But Mr. Blackard also knew it was coming in as well as Mr. Humphries?

The Witness: No, I later asked the driver and if the driver was here he could tell you whatever he knew, I can't.

Juror: Was anybody in the house when you left it—at Mr. Humphries' house?

The Witness: That I do not know. I didn't get out of my cab to find out. I came back to my stand and had a pretty good——

Juror: First time was loaded directly into Mr. Humphries' car?

The Witness: Yes, I deliberately loaded it into his car [399] and Mr. Humphries helped and he brought a little piece of canvas along to cover it up.

(Testimony of Frank V. Jones.)

He loaded it in his car and took it to a locker or some place, I don't know. The first time that Mr. Humphries went into Court about moose meat they never did come. In fact I shut up. In cab business you are in a bad business anyhow.

Mr. McCutcheon: May I examine the witness a little bit further in view of his last statement, Your Honor?

The Court: Very well, counsel, you may proceed.

Further Redirect Examination

By Mr. McCutcheon:

Q. You said that when Mr. Humphries was arrested nobody came around to see you?

(No response.)

Q. Well, I talked to you.

The Court: It isn't sufficient to shake your head. What is your answer to that?

The Witness: To my knowledge no one came to see me, no.

Q. (By Mr. McCutcheon): Didn't I come to see you, Mr. Jones?

A. If you did, you did not talk to me.

Q. Didn't you recall our conversation in July, 1948, immediately after Mr. Humphries' arrest?

A. No.

Mr. Cottis: I object, the record clearly shows that that [400] moose meat thing was in April. Now counsel is misleading the witness.

(Testimony of Frank V. Jones.)

Mr. McCutcheon: Well, I didn't mean to.

Mr. Cottis: Well, I have a certified copy of the conviction if you would like to refresh your memory.

Mr. McCutcheon: No, we recall it well now.

Q. Now, do you recall, Mr. Jones, my talking to you about this moose meat incident?

A. If you talked——

The Court: When?

Mr. McCutcheon: July, 1948, at my office in the presence of Mr. Humphries and myself and other persons being present?

A. I do not remember anything that you asked me, if you did. I don't remember even visiting you at that time at your office, if I did. There is a lot of things that I get around to seeing and I can't remember everything that goes on. I am no master-mind, mechanical man.

Q. Now, were you visited by Mr. Holger Larsen of the Fish and Wildlife Service about this incident?

A. I was not. I just checked up. Didn't you state earlier in the—state here a little earlier when you were cross-examined that I was served with a subpoena or warrant over my arrest before, if you check in the office out there you can't find any.

The Court: Don't ask counsel any questions. He is not able to answer any questions you ask him.

Mr. McCutcheon: I certainly couldn't answer that one.

Q. Now, Mr. Jones, didn't you testify here a

(Testimony of Frank V. Jones.)

little bit earlier in the trial when I asked you if you knew where the moose meat went, didn't you say that "I don't want to answer that because somebody else told me"?

A. I said on one load not both loads.

Q. I should have asked you about the second load, is that correct?

A. We were talking about the second load not the first load.

The Court: That is all, Mr. Jones, you may step down.

Mr. McCutcheon: Call Mr. Jack Castlio.

### JACK CASTLIO

called as a witness, having been duly sworn, took the stand and testified as follows:

#### Direct Examination

By Mr. McCutcheon:

Q. State your name and spell it for the Clerk, please?

A. My name is Jack Castlio.

Q. And you are in business here in Anchorage, are you?      A. Yes.

Q. What is the nature of your business?

A. I am an executive in a wholesale grocery firm.

Q. Calling your attention to the months of May and June of 1948, did you have at that time an occasion to take an inventory of the supplies at the Panhandle Restaurant? [402]

(Testimony of Jack Castlio.)

A. I recall it being about that time when I was asked to take an inventory of the restaurant supplies there.

Q. And at whose request did you take that inventory?      A. Mr. Joe Blackard's.

Q. And the amount of the inventory was how much—the value of it?

A. To the best of my knowledge it was about \$400.

Q. It was more than that?

A. No more than about \$400.

Q. How many days after the restaurant closed did you take this inventory, approximately?

A. I wasn't aware of the exact day the restaurant closed because of the confusion about the place. I believe it was a week or possibly ten days after the restaurant closed.

Q. And were the store-rooms locked?

A. There was a lock on one door that we went through.

Q. Who had the key to the lock at that time?

A. Man by the name of Jack Guard, who was chef.

Q. Who was that man?

A. He was a chef who was going to operate the restaurant when and if it opened again.

Q. And he had the keys to the storeroom, is that correct?      A. As I recall it, that is correct.

Q. And the storeroom revealed an inventory of only \$400, is that correct? [403]

(Testimony of Jack Castlio.)

A. The inventory was included in about three different rooms.

Q. But the total sum of the inventories was in the neighborhood of \$400 more or less?

A. That is right.

Mr. McCutcheon: Your witness.

Cross-Examination

By Mr. Cottis:

Q. Mr. Castlio, have you been in the grocery business for sometime?

A. Yes, several years.

Q. Were you familiar with Humphries' operation of this restaurant?

A. Yes, we did business with him most of the time that he was in there. That is, our firm did business with him for a few months.

Q. Considering your experience with Mr. Humphries and the operation of that restaurant, is it your opinion that \$400 is about the average inventory that he carried?      A. Yes.

Mr. McCutcheon: We object to that, if the Court please.

Mr. Cottis: What grounds?

Mr. McCutcheon: On the grounds it is outside the scope of the direct examination, for one thing, and, two, it is irrelevant and incompetent. I don't see how possibly the witness could answer that question. [404]

The Court: He can answer if he has the knowl-



(Testimony of Jack Castlio.)

edge. He hasn't shown himself qualified to answer yet.

Q. (By Mr. Cottis): Where have you been in the grocery business, Mr. Castlio?

The Court: I don't mean about his general qualifications but he hasn't shown that he was familiar with the inventory from day to day or week to week.

Q. (By Mr. Cottis): Mr. Humphries was a customer of yours, was he? A. Yes.

Q. Were you there frequently? A. Yes.

Q. Were you familiar with the general type and quantity of inventory that he carried?

A. Yes.

Q. And what is your opinion as to its average daily running value?

A. I would say that between four and six hundred dollars is about average on the type of merchandise I inventoried.

Q. And what type of merchandise was that?

A. What we call dry line, that is exclusive of butter, eggs and meat.

Q. And when you state that the inventory when you took inventory was approximately \$400 was that on the dry line alone?

A. Yes, non-perishables. [405]

Q. Do you have any opinion as to the value of the perishables? A. No, I do not.

Q. Did you ever at any time see an inventory in Mr. Humphries' custody that approached \$4,000?

A. No.

(Testimony of Jack Castlio.)

Q. Does Mr. Humphries owe you or your firm any money?      A. No.

Q. Did he in April of 1948?

A. I am not sure of my dates. He owed us a bill, a running bill, during the time that he was in business, a small bill.

Q. Did you ever try to collect that bill from him?

A. We collected quite regularly.

Q. Did you have any trouble collecting it ever?

A. Yes, at the end.

Mr. McCutcheon: What was the answer to that question?

The Witness: At the end it was very difficult to effect a collection. I mean toward the latter part of his operation.

Q. (By Mr. Cottis): Will you describe what experience, if any, you had in attempting to collect it?

A. I had to make several trips to the place of business each time I wanted to collect. I believe we had the account on a weekly basis. The last week or two my reception was very irate.

Q. That is, your reception by Mr. Humphries?

A. Yes.

Q. Were there any outward evidence of his irateness?

A. Yes, I was physically threatened.

Q. By whom?      A. Mr. Humphries.

Q. What kind of threat?

A. Getting up from the seat alongside of me

(Testimony of Jack Castlio.)

where we had been talking about it "I am going behind the counter and coming back out with the handle of a hammer."

Q. Did he have a hammer?

A. The handle of a hammer which was clattered onto the counter.

Q. Was he threatening you with the hammer?

A. I presume that is what he had in mind. He didn't say that he was.

Q. What did you do, did you stay there?

A. Until I considered the discussion as being fruitless to continue, a few moments.

Q. So you left, did you?

A. That is correct.

Q. Were you frightened?

A. I don't think so. It all depends on what you mean by "fright."

Q. Now, at the time you took this inventory after the restaurant had been closed, do you know how it came to be closed? [407]

A. I didn't understand the question?

Q. At the time you took this inventory in May, 1948, the restaurant was closed, was it not?

A. Yes.

Q. Do you know how it came to be closed?

A. No.

Q. Was there any meat around at the time you took the inventory?

A. There were a few pieces of meat and fish. However, there were very small pieces and were obviously refuse.

(Testimony of Jack Castlio.)

Q. Were there any eggs or milk around?

A. I don't recall any eggs or fresh milk.

Q. Were there any fresh fruits or vegetables?

A. Not that I recall.

Q. How did you get into the storeroom?

A. Got into one storeroom, passed through the door behind Mr. Jack Guard and I am quite sure he had a key with which he unlocked the door to that room, and then there was another smaller room on that same floor and a basement compartment.

Q. How did you get into the basement?

A. If I recall we went down the coal chute.

Q. Did you experience any difficulty in getting down there?

A. It wasn't easy but it wasn't exactly difficult.

Q. Did you testify that Joe Blackard asked you to take this inventory? [408]

A. I believe he did.

Q. Did he volunteer any explanation to you as to why he wanted the inventory?

A. Not that I especially recall, either he said so or I got the impression that he wanted the opinion or authority from someone that was familiar with the merchandise to say what the value of the stock there was. Now he may have given that as an explanation for the request. I didn't pay a great deal of attention to it.

Q. Did Humphries owe you some money at the time you took the inventory?

A. I believe he did.

(Testimony of Jack Castlio.)

Q. Did Blackard ask you to take any portion of the inventory to satisfy that bill?

A. I don't recall how that was handled. I was under the impression that Jack Guard paid me the amount of the bill. I mean, checking our ledger the account shows paid and that is——

Q. That is your best recollection?

A. That is my best recollection.

Q. Mr. Castlio, you were subpoenaed to come here? A. Yes.

Q. Were you paid any money at the time this subpoena was served on you? A. No.

Mr. Cottis: No further questions. [409]

### Redirect Examination

By Mr. McCutcheon:

Q. Who subpoenaed you, Mr. Castlio?

A. Joe Blackard handed me the subpoena.

Q. Now, at the time you took the inventory did you make any charge for that service?

A. No, I did not.

Q. You hoped to do business in the future with the new restaurant owner, didn't you?

A. That is correct.

Q. And with Mr. Blackard?

A. He was an account of ours too at the time.

Q. He had been for a period of time, hadn't he?

A. Yes, at the bar.

Q. You were friendly with him, were you not, during the period of time that he was in business?

(Testimony of Jack Castlio.)

A. That is correct.

Q. Had you been in Mr. Humphries' storeroom before?      A. Yes.

Q. On several occasions?

A. I wouldn't say several, few.

Q. On one or two occasions?

A. I believe so.

Q. And was that in the early part of his operation or the latter part? [410]

A. I believe it was in the early part of his operations.

Q. And what did you find at that time in the storeroom in the early part of his operations or do you recall?

A. I don't specifically recall, nothing unusual that I wouldn't expect to find.

Q. Do you know who Mr. Humphries did the bulk of his business, with you in purchasing groceries or with someone else?

A. I am quite sure he did not do the bulk of it with us.

Q. It wouldn't surprise you to know that he made a thousand dollar purchase from Jack Barrett would it?      A. No.

Mr. Cottis: Your Honor, I object to that question.

The Court: Overruled.

Q. (By Mr. McCutcheon): That wouldn't surprise you, Mr. Castlio?      A. No.



(Testimony of Jack Castlio.)

Q. Now, is it possible that he carried a larger inventory and you didn't know about it?

A. Yes.

Q. That is possible?           A. Certainly.

Mr. McCutcheon: No further questions.

Recross-Examination

By Mr. Cottis:

Q. Is it possible that he carried a larger inventory at the [411] Panhandle and you didn't know about it?

A. It is possible, of course, Mr. Cottis, but it is highly improbable.

Mr. Cottis: No further questions.

Further Redirect Examination

By Mr. McCutcheon:

Q. Did you ever have occasion to go out to his house to check his inventory there?

A. No, sir.

Mr. McCutcheon: That is all.

The Court: Do the jurors have any question?

Juror: Yes. Is it permissible for him to use that chart and show us how he got down in that basement?

The Court: Yes.

Further Recross-Examination

By Mr. Cottis:

Q. Mr. Castlio, could you come down here?

(Testimony of Jack Castlio.)

The Court: And interpret the chart.

Juror: Yes.

Q. (By Mr. Cottis): This might not be quite in proportion, Mr. Castlio, but if I may take the liberty, this was meant to represent the bar and this was the small storeroom and this would be the men's and women's rooms or the reverse. This I don't recall what it was. These supposedly are three card tables. There was some [412] evidence that there were two.

This is the restaurant portion and this is a room that is 16 or 18 feet long, according to Mr. Humphries' testimony and had a refrigerator or icebox—a reach-in icebox in it.

These are chairs and this, of course, is the entrance up here and this is Starns Liquor Store.

Now, I believe that one of the storerooms was in the basement and I think that is the one that the juror has in mind that she would like to know how you got into that, on this sketch.

A. You understand I am not familiar with the Panhandle for sometime and on many occasions I have gone into the storeroom. The particular day in question I am sorry to say I declined to see exactly how I got in there but as I recall it we went out the rear door, which I don't see indicated here, which went outdoors. There was a coal chute, I would say, about here, a large coal chute and I believe we went down there. I have gone down there several times, generally because the door of this

(Testimony of Jack Castlio.)

storeroom would be locked and the key not immediately available.

There is a trap door in this storeroom which lets down into these two small storerooms down here which are connected. I believe that on this day Mr. Guard and I went down through the coal chute to go in there to inventory the merchandise.

Q. (By the Juror): Do you mean to say you have gone down that coal chute [413] more than once?

The Witness: Yes. This door would be locked about one morning out of each week and in order to get an order and to find out what merchandise was on hand, generally I was allowed to inspect the stock alone. This was prior to the time that Mr. Humphries was operating it.

Q. (By Mr. Cottis): Prior to that time?

A. Yes.

Q. You would use the coal chute as an entrance-way to get down? A. That is correct.

Q. In other words it was large enough that a man could crawl up and down it?

A. Oh, yes.

Juror: How come you went down it more than once?

The Witness: I just explained, in order to inventory the stock on different occasions to see what would be necessary for the day's order. There were only two ways to get there—through this storeroom door and through a trap door; if this door was

(Testimony of Jack Castlio.)

locked and the key not available on the premises I would go down through the chute and inventory the merchandise.

Juror: Isn't it unusual for you to tell the restaurant man what he needs? Don't the restaurant man usually place their own order? [414]

The Witness: I tell him what he has on hand and what I think is needed.

Juror: Is that the way it is generally done?

The Witness: With me. I don't know how the other people do.

Juror: You mean the restaurant man wouldn't know what he needs?

The Witness: If he took the time off of the range right at that minute he could find it out, too, but I would do it for him, yes.

Juror: Before Mr.—

The Witness: I don't recall having gone through the chute while Mr. Humphries was there; in fact, I can't say that I specifically recall having gone into this basement while he was there. I have been in there over a hundred times and whether it was during that time or not I couldn't swear it.

Juror: When you took that inventory you inventoried what was up and down both times, about \$400?

The Witness: Yes, that is right.

The Court: That is all. Has counsel any further questions to ask?

(No response.)

The Court: Court will stand in recess until 15 minutes past 3:00.

(Short recess.)

The Court: Without objection the record will show all members of the jury present.

Mr. McCutcheon: Call R. E. Hilgilien.

Bailiff: He is not in the witness room.

Mr. McCutcheon: If the Court please, on the 21st day of June, 1949, I served R. E. Hilgilien at Red's Cab with a subpoena and at that time offered him the mileage as required by law and a day's attendance as a witness. I had some difficulty and the witness is absent at this time, your Honor, and I at this time move the Court for a bench warrant for his arrest.

The Court: Bench warrant may issue.

Mr. Cottis: May I see the return of service on that, your Honor?

The Court: Yes.

The Clerk: May I inquire of counsel where this witness may be found?

The Court: Yes, where may the witness be found?

Mr. McCutcheon: Well, I suggest, your Honor that the Marshal inquire at Red's Cab Stand.

The Court: Has the subpoena and the return thereto been filed?

Mr. McCutcheon: The return will be filed at this time. Counsel has asked to see the return.

Mr. Cottis: Of course I have no objection to the

witness but the return seems seriously defective.

The Court: Let me see the paper.

Mr. McCutcheon: If the return is in any way defective I shall be pleased to amend it. If counsel wishes to examine me under oath I shall be pleased to take the witness stand in connection with the serving of this subpoena.

The Court: Under our law is a private person permitted to serve a subpoena?

Mr. McCutcheon: I think so.

The Court: Must there not be a return by affidavit? I think the return is absolutely insufficient.

Mr. McCutcheon: If the Court please, I shall be glad to testify under oath at this time.

The Court: The return itself—the testimony under oath doesn't take the place of a proper return. I think there must be an affidavit showing that the—an affidavit by the person who served the subpoena showing the service of the subpoena and the time and place.

Mr. McCutcheon: Very well, sir, at the next recess.

The Court: And also the tender of the witness fees. The order for issuance of a bench warrant will not issue until such return is made.

Mr. McCutcheon: I shall prepare such return at the next recess.

The Court: Counsel may take the paper and have it available so that a proper return can be made to it. [417]